

OFFICIAL TRANSCRIPT

Page 1

Trinity College
300 Summit Street
Hartford, CT 06106-3100
United States

Name : Joshua M. Berland
Student ID: 2022291
Address : 2 Gordon Pl
Cambridge, MA 02139-4604
United States

Print Date : 05-21-2021

Print Date : 05-21-2021							Summer 2015						
							<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>	
- - - - - Trinity Degrees Awarded - - - - -							TRCR 521	History (Major)	1.00	1.00	P		
Degree :	Bachelor of Arts						History of the Soviet Union						
Confer Date :	05-20-2018						Grade: A-						
Degree GPA :	3.715						Boston University						
Degree Rank :	117 of 558						Boston, MA						
Degree Honors :	cum laude						TERM GPA :	0.000	TERM TOTALS :	1.00	1.00	0.000	
Plan :	Honors in Political Science Major												
Sub-Plan :	Concentration in International Relations						CUM GPA :	3.286	CUM TOTALS :	9.00	8.00	23.000	
Plan :	Middle East Studies Minor												
- - - - - Academic Program History - - - - -							Fall 2015						
Program :	Undergraduate						<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>	
	10-08-2015 : History Major						ARAB 101	Intensive Elementary Arabic I	1.50	1.50	B+	4.999	
	03-10-2016 : Political Science Major						HIST 223	Japan into the Mod World	1.00	1.00	A-	3.667	
	10-14-2016 : Political Science Major						MATH 107	Elements of Statistics	1.00	1.00	A	4.000	
	10-14-2016 : Arabic Language Minor						POLS 104	Intro Intl Relations	1.00	1.00	A	4.000	
	10-14-2016 : Middle East Studies Minor						TERM GPA :	3.704	TERM TOTALS :	4.50	4.50	16.666	
	12-13-2017 : Political Science Major												
	12-13-2017 : Middle East Studies Minor						CUM GPA :	3.449	CUM TOTALS :	13.50	12.50	39.666	
							Faculty Honors						
- - - - - Beginning of Undergraduate Record - - - - -							Spring 2016						
Fall 2014							<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>	
<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>	<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>		
FYSM 101	BFF or Strange Bedfellows?	1.00	1.00	B	3.000	PHED 111	Squash I	0.25	0.25	P			
HIST 102	Europe Since 1715	1.00	1.00	B+	3.333	Grading Basis: Pass/Fail							
MATH 125	Functions and Limits	1.00	0.00	W		PHED 211	Squash II	0.25	0.25	P			
RHET 101	Writing	1.00	1.00	B	3.000	Grading Basis: Pass/Fail							
TERM GPA :	3.111	TERM TOTALS :	4.00	3.00	9.333	ARAB 102	Intensive Elementary Arabic II	1.50	1.50	A	6.000		
CUM GPA :	3.111	CUM TOTALS :	4.00	3.00	9.333	POLS 220	Histry of Pol Thought II	1.00	1.00	A	4.000		
							POLS 390	Theor Internat Political Econ	1.00	1.00	A	4.000	
							RELG 282	Modern Islamic Movements	1.00	1.00	A	4.000	
							TERM GPA :	4.000	TERM TOTALS :	5.00	5.00	18.000	
Spring 2015							CUM GPA :	3.604	CUM TOTALS :	18.50	17.50	57.666	
<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>	Faculty Honors							
CLCV 111	Intro Classical Art/Archaeolgy	1.00	1.00	A-	3.667	----- End Of Column -----							
HIST 213	Modern Jewish History	1.00	1.00	B+	3.333								
PBPL 123	Fundamentals of American Law	1.00	1.00	B	3.000								
POLS 103	Intro Compar Politics	1.00	1.00	A-	3.667								
TERM GPA :	3.417	TERM TOTALS :	4.00	4.00	13.667								
CUM GPA :	3.286	CUM TOTALS :	8.00	7.00	23.000								
----- End Of Column -----													

OFFICIAL TRANSCRIPT

Page 2

Trinity College
300 Summit Street
Hartford, CT 06106-3100
United States

Name : Joshua M. Berland
Student ID: 2022291
Address : 2 Gordon Pl
Cambridge, MA 02139-4604
United States

Summer 2016

<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
INTR 115	Government Intern	0.50	0.50	P	
Grading Basis: Pass/Fail					
INTR 127	Socl Services Intern	0.50	0.50	P	
Grading Basis: Pass/Fail					
TERM GPA :	0.000	TERM TOTALS :	1.00	1.00	0.000
CUM GPA :	3.604	CUM TOTALS :	19.50	18.50	57.666

Fall 2016

<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
TRCR 529	Mod Lang-Arabic (Elec)	2.00	2.00	P	
Modern Standard Arabic, Intermediate I					
Grade: B+					
TRCR 537	Politicl Science (Major)	1.00	1.00	P	
International Relations and Diplomacy in the Middle East					
Grade: A-					
TRCR 537	Politicl Science (Major)	1.00	1.00	P	
Seminar on the Israeli-Palestinian Conflict					
Grade: A-					
Council on International Educational Exchange					
Amman, Jordan					
TERM GPA :	0.000	TERM TOTALS :	4.00	4.00	0.000
CUM GPA :	3.604	CUM TOTALS :	23.50	22.50	57.666

Spring 2017

<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
ARAB 202	Intermediate Arabic II	1.00	1.00	P	
Grading Basis: Pass/Low Pass/Fail					
POLS 380	War & Peace in the Middle East	1.00	1.00	A-	3.667
POLS 392	Legislative Internship	1.00	1.00	B+	3.333
POLS 394	Legislative Internship	1.00	1.00	B+	3.333
TERM GPA :	3.444	TERM TOTALS :	4.00	4.00	10.333
CUM GPA :	3.579	CUM TOTALS :	27.50	26.50	67.999

----- End Of Column -----

Summer 2017

<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
INTR 119	Legislative Intern	0.50	0.50	P	
Grading Basis: Pass/Fail					
TERM GPA :	0.000	TERM TOTALS :	0.50	0.50	0.000
CUM GPA :	3.579	CUM TOTALS :	28.00	27.00	67.999

Fall 2017

<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
BIOL 131	Urban Wildlife Ecology	1.00	1.00	A	4.000
POLS 242	Pol Sci Research Methods	1.00	1.00	A	4.000
POLS 353	Authoritarianism in Eurasia	1.00	1.00	A	4.000
POLS 496	Senior Thesis Colloquium	1.00	1.00	A	4.000
TERM GPA :	4.000	TERM TOTALS :	4.00	4.00	16.000
CUM GPA :	3.652	CUM TOTALS :	32.00	31.00	83.999
Faculty Honors					

January 2018

<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
LACS 233	Godfather: Art of Hard Choices	0.50	0.50	A+	2.166
TERM GPA :	4.332	TERM TOTALS :	0.50	0.50	2.166
CUM GPA :	3.667	CUM TOTALS :	32.50	31.50	86.165

Spring 2018

<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
PHED 124	Fitness I	0.25	0.25	P	
Grading Basis: Pass/Fail					
PHED 131	Golf	0.25	0.25	P	
Grading Basis: Pass/Fail					
POLS 385	Crossing Borders	1.00	1.00	A	4.000
POLS 497	Senior Thesis	1.00	1.00	A	4.000
RELG 280	Muhammad and the Qur'an	1.00	1.00	A	4.000
RELG 399	Independent Study	1.00	1.00	A	4.000
TERM GPA :	4.000	TERM TOTALS :	4.50	4.50	16.000

CUM GPA : 3.715 CUM TOTALS : 37.00 36.00 102.165

Faculty Honors

----- End Of Transcript -----

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

May 28, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I write to offer my recommendation on behalf of Joshua Berland for a judicial clerkship in your chambers. Josh is a strong candidate for a clerkship, for reasons I will discuss here. I came to know Josh because he was enrolled in my Fourth Amendment and Technology seminar in the fall of 2020.

By way of background, the Fourth Amendment and Technology seminar addresses the complicated issues that arise from the intersection of the Fourth Amendment and developing technology and its use by law enforcement. It is a demanding course. Students are required to learn core Fourth Amendment doctrines and concepts and then apply them to developing technological problems, including facial recognition, mass aerial surveillance, predictive policing and more. It also includes a significant writing assignment.

From the first day of the semester, I was impressed by the way Josh approached the class. He was consistently well prepared for class and enthusiastic about the topic. He understood the underlying Fourth Amendment cases and key concepts well. What made Josh stand out, however, was his deep intellectual engagement with the material and the problems. I could always count on Josh to raise a hand and offer a well thought out counter-argument that would spark a useful discussion. He often anticipated an overlooked counter-argument I had planned to bring to the class's attention. Josh was not content with simply learning the material and applying it—he wanted to analyze the problems to understand the analytical route a court took, and to be sure that the problems used the right reasoning to reach the right result. Josh was always respectful of his colleagues' perspectives in discussion and his arguments were consistently grounded in law and logical reasoning. His contributions were truly valuable to the course and to promoting a high level of intellectual discourse among his colleagues. His arguments reflected solid advocacy skills and a sophisticated comprehension.

I became familiar with Josh's writing through the seminar's writing component. Students are required to write a paper about a topic at the intersection of the Fourth Amendment and technology. They are required to submit an initial draft and revise it based on the instructor's comments and feedback. Josh was well-prepared for the meetings during which we discussed his proposed topics and drafts. By that, I mean that he had conducted the necessary research, read and understood the cases, and cogently explained his arguments and analysis. Josh chose to write his seminar paper on the ways in which courts have addressed defendants' claims that internet service providers' disclosures of IP addresses and other information violates the Fourth Amendment both before and after *Carpenter v. United States*. Josh also assessed whether *Carpenter* spurred a change in law enforcement practices regarding the amount and type of data law enforcement requested from ISPs. Josh's paper was well-written, logically organized, and thorough. I was not at all surprised to learn that he was a brief finalist for the Davis Competition, given the caliber of the work I saw on his seminar paper.

Josh is a dedicated student and has a terrific work ethic. He never missed a deadline in my class—he completed assignments before the due date, and his work was always excellent. Josh also handles receiving and incorporating feedback on writing assignments with true professionalism. During our meeting to discuss my comments and suggestions on his initial draft, Josh understood the notes and comments to be constructive critiques. He viewed them as a way to further improve his work, and incorporated them appropriately. Josh is also remarkably adept at providing feedback and proofreading. Seminar students are required to read and critique a peer's draft and offer substantive suggestions. Josh did an outstanding job on his peer review. Josh offered constructive suggestions to improve his colleague's arguments and analysis. Many of these issues were problems I had spotted in my own review. Josh was incredibly thorough and his feedback was worded professionally and courteously. His colleague appreciated Josh's attention to detail.

I've enjoyed getting to know Josh over the fall semester. In addition all the traits I've discussed above, he's a kind and responsible person. He's consistently been courteous, trustworthy, and professional in all of our interactions, and he displays the

Alex Klein - aklein@wlu.edu

same traits when engaging with his colleagues. I have no doubt of his ability to work collaboratively and productively with colleagues, even when they may have significant disagreements. Josh is intelligent, but more significantly, he takes the necessary time to thoroughly understand and explore every angle of a legal issue. His curiosity, thoroughness, and intellectual rigor helped make the seminar an even better experience for his colleagues, and I was delighted to have him in class.

Josh would be an excellent law clerk for all the reasons I've discussed in this letter. Please feel free to contact me at any time at 540-458-8330, 540-294-6552, or at aklein@wlu.edu, if you have any questions or if there is any other information I can provide.

Sincerely,

Alexandra Klein
Visiting Assistant Professor of Law

Alex Klein - aklein@wlu.edu

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

May 28, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

It is my pleasure to recommend Joshua Berland for a clerkship in your chambers.

I am the Director of Legal Writing and Mr. Berland was a student in my first-year two semester Legal Writing class. The classes are small and I was able to get to know him fairly well.

Mr. Berland impressed me for several reasons. He's very bright and he works hard. He is a diligent and disciplined student. He takes ownership for his own learning and improvement. He often came to me with questions, but he had always done the work in advance and had identified the issues he was struggling with as well as possible outcomes.

Mr. Berland was a pleasure to have in class. He is well regarded by his peers and clearly someone they respect and admire. I knew he would come to class prepared and I often relied on him to start class discussions. His contributions were relevant and always helped moved the discussion along in a productive manner.

He has also distinguished himself outside of class. He's been very active in our Moot Court program and done extremely well in competitions. He's also involved in some of our student organizations. All of this speaks well of his desire to take on more than is required and his ability to juggle multiple obligations well.

I have no doubt that Mr. Berland will become an outstanding lawyer. I am happy to recommend him without reservation. Please let me know if I can add anything further.

Sincerely,

Sheryl Buske
Professor of Practice
Director of the Legal Writing Program

Sheryl Buske - sbuske@wlu.edu

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW

May 28, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing to offer my wholehearted recommendation of Joshua Berland, who has applied to clerk in your chambers this summer. I taught Josh in my 1L Torts class in Fall 2019. Josh stood out for his thoughtful questions and preparedness.

Josh has achieved a number of accolades during law school, most related to his effectiveness as a writer. His writing skills have set him up for success in practice, and he would be an invaluable asset as a clerk. Josh also has had a variety of professional experiences in both criminal and civil cases that have given him a solid experiential foundation. It is without any reservation that I recommend Josh to you as a clerk.

Please let me know if you need any additional information from me.

All the best,

Karen E. Woody
Associate Professor
Washington and Lee University School of Law
Sydney Lewis Hall
Office 454
204 West Washington Street
Lexington, VA 24450

Karen Woody - kwoody@wlu.edu

Joshua Berland
Writing Sample

This writing sample is an excerpt of my brief which was originally submitted to Washington & Lee Law's John W. Davis Moot Court Competition and addresses the extraterritoriality of a criminal statute. The full brief reached the finals of the Moot Court Brief Competition.

Question Presented

1. Whether the United States has extraterritorial jurisdiction over Mr. Pierre Martin under 18 U.S.C. § 1114, a statute which criminalizing the killing or attempted killing of any officer, employee, or uniformed service member of the United States.

Statement of the Case

On July 12, 2019, FBI Agent Doug Horowitz was found dead in Canada while on a work assignment. In connection to his death, FBI agents arrested Mr. Pierre Martin ("Respondent"), a Canadian citizen who moved from Canada to Boston in August of 2019. Following Respondent's arrest, he was indicted by a grand jury on the charges of killing a United States agent in violation of 18 U.S.C. § 1114. Respondent entered a conditional guilty plea, arguing that he could not be charged under § 1114 because the death occurred outside of the United States, and § 1114 lacked extraterritorial application. The district court denied Respondent's motion to dismiss, finding that under *Bowman*, § 1114 applied extraterritorially.

On appeal, the 13th Circuit reversed the lower court's decision, finding that § 1114 did not have extraterritorial application. The Court relied on *Morrison* to conclude that there is a presumption against extraterritoriality and that § 1114 failed to overcome that presumption.

Joshua Berland
Writing Sample

Summary of the Argument

The recent Supreme Court cases addressing the extraterritoriality of civil statutes do not affect the *Bowman* progeny of cases because: 1) criminal statutes that are written to protect the United States from direct harm are logically different than civil or criminal statutes which resolve disputes between private parties; and 2) the recent Supreme Court decisions are silent on *Bowman*, even after lower courts continued applying it to criminal statutes. This silence is indicative of approval. When *Bowman* is applied to 18 U.S.C. § 1114, courts have found that it has extraterritorial reach.

In the alternative, if *RJR* controls the extraterritoriality of 18 U.S.C. § 1114, then the statute still has extraterritorial application because: 1) the earlier version of § 1114 demonstrates explicit Congressional intent for the statute to have extraterritorial application. The scope of the statute was then broadened in the 1996 re-drafting. Thus, the jurisdiction and scope of the statute has been increased, not diminished; 2) Congress knew that over 100,000 uniformed service members and large numbers of United States diplomats and Foreign Service Officers were stationed abroad when writing § 1114. To grant such persons protection when performing their official duties, it is necessary that § 1114 have extraterritorial application. Thus, Congress's objectives and writing demonstrate extraterritorial intent; and 3) § 1114 is redundant without extraterritorial jurisdiction as it imposes no additional punishment to the underlying crimes.

Argument

I. *Bowman* Determines the Extraterritoriality of Criminal Statutes.

In civil cases there is a strong presumption against applying statutes extraterritorially. *See RJR Nabisco, Inc. v. European Community*, 136 S.Ct. 2090 (2016) ("Absent clearly expressed

Joshua Berland
Writing Sample

congressional intent to the contrary, federal laws will be construed to have only domestic application.”). However, according to the Court in *Bowman*, “the same rule of interpretation should not be applied to criminal statutes.” *United States v. Bowman*, 260 U.S. 94, 98 (1922). Circuit Courts are split on whether the recent Supreme Court’s decisions on the territoriality of civil statutes affect the territoriality of criminal statutes. Compare *United States v. Al Kassar*, 660 F.3d 108, 118 (2d Cir. 2011) (“The presumption that ordinary acts of Congress do not apply extraterritorially does not apply to criminal statutes.”), with *United States v. Ubaldo*, 859 F.3d 690, 700 (9th Cir. 2017) (“The Supreme Court clarified that courts must begin with the presumption that United States statutes do not apply to foreign conduct.”). Despite the circuit split, the intention of the Supreme Court is clear: *Bowman* controls extraterritoriality in criminal cases, and *Kiobel*, *Morrison*, and *RJR* control extraterritoriality in civil cases. *United States v. Al-Imam*, 373 F. Supp. 3d 247, 260-62 (D.D.C. 2019)

In *Bowman*, the Court explained that not all criminal statutes carry the same presumption against extraterritoriality as civil statutes because as a class, criminal statutes are “not [always] logically dependent on their locality for the government’s jurisdiction.” *Bowman*, 260 U.S. at 98. *Bowman* splits criminal statutes into two categories. *Id.* The first are crimes against private individuals such as burglary or assault. *Id.* These crimes carry a presumption against extraterritoriality because they affect the community they are perpetrated in. *Id.* However, certain criminal statutes exist as the function of a “government[’s] [right] to defend itself.” *Id.* For such statutes, limiting their breadth to a “territorial jurisdiction would be to greatly curtail the scope and usefulness of the statute.” *Id.* Thus, when Congress writes a statute to prevent the United States from harm, the location the perpetrator acts from is irrelevant, and there is no presumption against extraterritoriality. *Id.*

Joshua Berland
Writing Sample

RJR, *Kiobel*, and *Morrison* have no effect on the doctrine created by *Bowman* because they neither mention nor overrule it. *United States v. Campbell*, 798 F. Supp. 2d 293, 303 (D.D.C. 2011). Judge Easterbrook has explained that *Bowman*'s application to criminal law "is not affected by yet another decision showing how things work on the civil side." *United States v. Leija-Sanchez*, 820 F.3d 899, 900-01 (7th Cir. 2016). Thus, the Supreme Court's silence on *Bowman* supports the decision of lower courts to continue applying it in criminal matters. *Id.*

The Supreme Court is also not oblivious to lower court decisions. After *Morrison* was decided in 2010, courts continued to apply *Bowman* and not *Morrison* in criminal cases. Julie Rose O'Sullivan, *The Extraterritorial Application of Federal Criminal Statutes: Analytical Roadmap, Normative Conclusions, and a Plea to Congress for Direction*, 106 GEO. L.J. 1021, 1068-72 (2018). Had the Supreme Court taken issue with this, it could have clarified its opinion in its subsequent *Kiobel* or *RJR* opinions. The Court's choice not to repudiate *Bowman* in either *Kiobel* or *RJR* indicates its affirmation of the jurisprudence in *Bowman*.

II. When the *Bowman* Progeny of Cases is Applied to U.S.C. § 1114, it has Extraterritorial Application.

When courts apply the *Bowman* progeny of cases, they grant extraterritorial jurisdiction to statutes when: 1) a criminal offense directly harms the United States Government; and 2) it can be inferred that Congress intended for the statute to have extraterritorial reach. *United States v. Vilar*, 729 F.3d 62, 73 (2d Cir. 2013); *Al Kassar*, 660 F.3d at 118. When this test is applied to § 1114, courts have unanimously held that it has extraterritorial application. *Vilar*, 729 F.3d at 73; *Al Kassar*, 660 F.3d at 118; *United States v. Benitez*, 741 F.2d 1312, 1317 (11th Cir. 1984); *Al-Imam*, 373 F. Supp. 3d at 260; *United States v. Abu Khatallah*, 151 F. Supp. 3d 116, 126-133 (D.D.C. 2015).

Joshua Berland
Writing Sample

In *Al-Imam*, *Al Kassar*, and *Benitez*, the courts explained that the first element was satisfied because the statute protects against offenses directed at the United States government; it criminalizes the killing of any United States employee, officer, or uniformed service member while they are acting in their official capacity. *Al Kassar*, 660 F.3d at 118; *Benitez*, 741 F.2d at 1317; *Al-Imam*, 373 F. Supp. 3d at 260. Killing American officials constitutes a harm against the United States. *Al Kassar*, 660 F.3d at 118; *Benitez*, 741 F.2d at 1317; *Al-Imam*, 373 F. Supp. 3d at 260. Likewise, the second element was satisfied because when the statute was drafted, Congress knew that more than 100,000 uniformed service members were stationed abroad, as well as large numbers of United States diplomats and Foreign Service Officers. *Al Kassar*, 660 F.3d at 118; *Benitez*, 741 F.2d at 1317; *Al-Imam*, 373 F. Supp. 3d at 262. Thus, Congress intended for the statute to have extraterritorial reach because the statute confers protections to persons Congress knew were commonly stationed abroad. *Al Kassar*, 660 F.3d at 118; *Benitez*, 741 F.2d at 1317; *Al-Imam*, 373 F. Supp. 3d at 262.

This Court should rule that § 1114 has extraterritorial application for the same reasons that lower courts did in *Al Kassar*, *Benitez*, and *Al-Imam*. *Al Kassar*, 660 F.3d at 118; *Benitez*, 741 F.2d at 1317; *Al-Imam*, 373 F. Supp. 3d at 262. The first element is met because murdering United States officers, uniformed service members, or employees constitutes a direct harm against the United States as it hurts America when its personnel are killed. Likewise, the second element is also met. Congress drafted § 1114 to protect uniformed service members, officers, and employees from harm when carrying out their official duties. Furthermore, Congress knew that large numbers of such persons were stationed abroad when carrying out their official duties. Thus, for Congress's intent to be satisfied, it is necessary that the statute have extraterritorial application.

Joshua Berland
Writing Sample

While lower courts cannot instruct the Supreme Court on how to rule, the eight times lower courts have applied the *Bowman* progeny of cases to § 1114, they have granted the statute extraterritorial application. This is indicative of a judicial consensus on how to apply *Bowman* to § 1114. *Vilar*, 729 F.3d at 73; *United States v. Siddiqui*, 699 F.3d 690, 700-01 (2d Cir. 2012); *Al Kassar*, 660 F.3d at 118; *Benitez*, 741 F.2d at 1317; *Al-Imam*, 373 F. Supp. 3d at 260; *United States v. Abu Khatallah*, 151 F. Supp. 3d 116, 126-133 (D.D.C 2015); *United States v. Georgescu*, 148 F. Supp. 3d 319, 323 (S.D.N.Y. 2015); *United States v. Hasan*, 747 F. Supp. 2d 642, 686 (E.D. Va. 2010).

III. When the *Morrison*, *Kiobel*, *RJR* Progeny of Cases is Applied to U.S.C. § 1114, it has Extraterritorial Application.

In the alternative, if the Court reads *Morrison*, *Kiobel*, and *RJR* as having overturned *Bowman*, then the Court will apply a different test to determine if the statute has extraterritorial application. This test was most recently articulated in *RJR* and has two parts. *RJR Nabisco, Inc. v. European Community*, 136 S.Ct. 2090, 2101-03 (2016). Only the first part is relevant here, because if met, the second element is unnecessary. *Id.* This test asks whether Congress has “affirmatively and unmistakably instructed” that the statute will have extraterritorial application. *Id.* However, *RJR* makes clear that “an express statement of extraterritoriality is not essential” for a statute to have extraterritorial effect and that “context can be consulted as well.” *Id.*

The *Gracia Sota* court applied the *RJR* framework to § 1114 and found that it did not have extraterritorial application. *United States v. Garcia Sota*, 948 F.3d 356 (D.C. Cir. 2020). In part, the court wrongly concluded this because of its misinterpretation of the legislative history. *Id.* at 358-59. Prior to the 1996 re-drafting of § 1114, “the statute contained a column and a half list of the sorts of employees covered by the statute. This list contained jobs where the employee

Joshua Berland
Writing Sample

would usually have been working overseas; for instance, any security officer for the Department of State or Foreign Service.” *Id.* To explicitly list job classes as protected, when those jobs must be performed abroad, demonstrates that Congress affirmatively and unmistakably instructed that § 1114 had extraterritorial application. After the 1996 revision, this discrete list was expanded to all federal employees, officers, or uniformed service members. Protection of Officers and Employees of the United States, 18 U.S.C. § 1114. Moving from a discrete list of protected roles to an all-encompassing statement—any federal employee, officer, or uniformed service member—demonstrates an affirmative and unmistakable intent to expand the scope of the statute’s application. Thus, because § 1114 had extraterritorial application in its original version, and because its scope was broadened, § 1114 continues to include Congress’s affirmative and unmistakable instruction that it be applied extraterritorially.

Further demonstrating Congress’s affirmative and unmistakable instruction to grant § 1114 extraterritorial application was their decision to add uniformed service members to the protected classes after the 1996 redrafting. *Id.* At the time the statute was re-drafted, 15% of American armed forces were stationed abroad. *Garcia Sota*, 948 F.3d at 359. Thus, to update a statute to protect the armed forces while they are “engaged in the performance of official duties,” when 15% of those official duties were being conducted abroad, strongly implies that Congress intended for this statute to have extraterritorial application. Protection of Officers and Employees of the United States, 18 U.S.C. § 1114.

Finally, without extraterritorial application § 1114 is redundant. The statute provides that if a person kills or attempts to kill any employee, officer, or service member of the United States, that person shall be charged with the underlying crime. *Id.* However, § 1114 imposes no additional crime or punishment for such acts. *Id.* Without extraterritorial application, this statute

Joshua Berland
Writing Sample

does nothing more than what the underlying criminal statutes already do. Only with extraterritorial jurisdiction does this statute criminalize anything more than what is already a crime. Thus, it is only logical that Congress intended for the statute to apply extraterritorially.

Combined, these arguments demonstrate Congress's affirmative and unmistakable instruction that the statute have extraterritorial application.

Conclusion

For the foregoing reasons, Petitioner requests that this Court hold that 18 U.S.C. § 1114 has extraterritorial application.

Applicant Details

First Name **Richa**
 Last Name **Bijlani**
 Citizenship Status **U. S. Citizen**
 Email Address rbijlani@umich.edu
 Address

Address

Street
520 North 5th Avenue, Apt 2
 City
Ann Arbor, MI
 State/Territory
Michigan
 Zip
48104
 Country
United States

Contact Phone Number **2483217857**

Applicant Education

BA/BS From **Vanderbilt University**
 Date of BA/BS **May 2017**
 JD/LLB From **The University of Michigan Law School**
<http://www.law.umich.edu/currentstudents/careerservices>
 Date of JD/LLB **May 6, 2022**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Michigan Journal of Law Reform**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial Internships/
 Externships **No**

Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Friedman, Richard
rdfrdman@umich.edu
734-647-1078

Santacroce, David
dasanta@umich.edu
734-763-4319

Brensike Primus, Eve
ebrensik@umich.edu
734-615-6889

References

Professor Eve Brensike Primus - ebrensik@umich.edu, 734.615.6889

Professor Richard Friedman - rdfrdman@umich.edu, 734.647.1078

Professor David Santacroce - dasanta@umich.edu, 734.763.4319

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Richa Bijlani

520 N 5th Ave, Apt 2, Ann Arbor, MI 48104 • rbijlani@umich.edu • (248) 321-7857

June 14, 2021

The Honorable Elizabeth W. Hanes
U.S. District Court for the Eastern District of Virginia
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes,

I am writing to apply for a clerkship in your chambers for the 2022-2024 term. I am a third-year law student at the University of Michigan and will graduate in May 2022. As an aspiring public defender, clerking would help me become the best advocate possible for my clients. Since I hope to live and work in the Southeast in the long term, I would appreciate the opportunity to begin my legal career as your law clerk.

During my time in law school, I have sought out experience in research and writing beyond my required coursework. I have written an appeal on a suppression issue related to a police stop and search of a vehicle as a law clerk at Orleans Public Defenders, researched and summarized criminal and civil rights cases through my pro bono work, and argued for greater constitutional protections during capital sentencing phases in my Note. And I continue to research, write, and edit as a Legal Writing Teaching Assistant and an Articles Editor for the *Michigan Journal of Law Reform*.

These roles also required me to multitask and meticulously manage my time to meet deadlines. As a student attorney in the Civil-Criminal Litigation Clinic, I juggled the needs of four clients by drafting and filing timely motions and briefs, negotiating with opposing counsel and community organizations, and appearing in court on a weekly basis. Additionally, this summer at the Colorado State Public Defender's Office, I am handling my own caseload of misdemeanors in four counties.

I hope to use the skills I have gained through these experiences and my coursework to be an asset to your chambers. My resume, transcript, and writing sample are attached along with letters from my recommenders:

- Professor Richard Friedman: rfdman@umich.edu, (734) 647-1078
- Professor Eve Brensike Primus: ebrensik@umich.edu, (734) 615-6889
- Professor David Santacroce: dasanta@umich.edu, (734) 763-4319

Thank you for your consideration.

Sincerely,



Richa Bijlani

Richa Bijlani

520 N 5th Ave, Apt 2, Ann Arbor, MI 48104 • rbijlani@umich.edu • 248.321.7857

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL

Ann Arbor, MI

Juris Doctor GPA 3.721

Expected May 2022

Journal: Michigan Journal of Law Reform, *Articles Editor*

Honors: Dean's Public Service Fellowship

Public Interest Student Funded Fellowship

Activities: Legal Writing and Practice Program, *Teaching Assistant*

Project Access, *Coordinator* (legal research support for Orleans Public Defenders)

Civil Rights Litigation Clearinghouse

MDefenders (faculty-sponsored group for aspiring public defenders)

VANDERBILT UNIVERSITY

Nashville, TN

Bachelor of Arts in Anthropology (Departmental Honors), minors: French, Neuroscience

May 2017

Senior Honors Thesis: *Quantifying Structural Differences in Primary and Secondary Sensory Areas within the Major Primate Taxa*

EXPERIENCE

OFFICE OF THE COLORADO STATE PUBLIC DEFENDER

Dillon, CO

Law Clerk

May 2021–August 2021

CIVIL-CRIMINAL LITIGATION CLINIC

Ann Arbor, MI

Student Attorney

January 2021–Present

- Drafted a motion for compassionate release based on COVID-19 filed in the Western District of Michigan
- Argued and won motions to extend discovery, against granting summary disposition, and to shorten probation
- Negotiated a conditional order of dismissal in a landlord-tenant case and secured federal funding for my client

LEGAL SERVICES OF SOUTH CENTRAL MICHIGAN

Ypsilanti, MI

Law Clerk

August 2020–January 2021

- Conducted client intake, prepared pleadings, and assisted in negotiation on behalf of tenants facing eviction

ORLEANS PUBLIC DEFENDERS

New Orleans, LA (remote)

Law Clerk

June 2020–August 2020

- Drafted an appeal brief filed in Louisiana's Fourth Circuit on a Fourth Amendment police stop issue
- Drafted research memos for an objection to the State's motion in limine and other constitutional issues
- Reviewed discovery to reduce felony home invasion to a misdemeanor and to prepare a favorable plea

ADVANCEMENT PROJECT

Washington, D.C.

Jail Litigation Hotline Volunteer

June 2020–August 2020

- Took declarations from detainees at the Wayne County Jail in Detroit, MI regarding conditions during COVID-19

SECOND NATURE WILDERNESS FAMILY THERAPY

Duchesne, UT

Field Instructor

January 2019–March 2019

- Planned and led wilderness survival backpacking trips for teenagers with emotional behavioral diagnoses

WORLD AFFAIRS COUNCIL

Seattle, WA

Community Programs Intern

October 2017–March 2018

- Coordinated and hosted events for a 501(c)(3) nonprofit organization on issues related to international affairs

ADDITIONAL

Languages: Spanish (basic proficiency), French (basic proficiency)

Publications: *More Than Just a Fact-Finder* (forthcoming); *Evolutionary Neurocartography*, American Association of Physical Anthropologists (2016); *A Passenger to the Infinite*, Alliance for Young Artists & Writers (2013)

Interests: Yoga (RYT 200-hour teacher training), volunteering on farms, writing creative non-fiction

Control No: E183792701

Issue Date: 06/01/2021

Page 1

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Bijlani, Richa
Student#: 55299891



Paul R. Johnson
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2019 (September 03, 2019 To December 20, 2019)								
LAW	510	002	Civil Procedure	Richard Friedman	4.00	4.00	4.00	A-
LAW	520	002	Contracts	Bruce Frier	4.00	4.00	4.00	A-
LAW	580	001	Torts	Kyle Logue	4.00	4.00	4.00	B+
LAW	593	005	Legal Practice Skills I	Sammy Mansour	2.00		2.00	S
LAW	598	005	Legal Pract:Writing & Analysis	Sammy Mansour	1.00		1.00	S
Term Total				GPA: 3.566	15.00	12.00	15.00	
Cumulative Total				GPA: 3.566		12.00	15.00	
Winter 2020 (January 15, 2020 To May 07, 2020)								
<i>During this term, a global pandemic required significant changes to course delivery. All courses used mandatory Pass/Fail grading. Consequently, honors were not awarded for 1L Legal Practice.</i>								
LAW	530	001	Criminal Law	David Moran	4.00		4.00	PS
LAW	540	003	Introduction to Constitutional Law	Leah Litman	4.00		4.00	PS
LAW	594	005	Legal Practice Skills II	Sammy Mansour	2.00		2.00	PS
LAW	681	001	First Amendment	Don Herzog	4.00		4.00	PS
Term Total					14.00		14.00	
Cumulative Total				GPA: 3.566		12.00	29.00	

Continued next page >

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL

Control No: E183792701

Issue Date: 06/01/2021

Page 2

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Bijlani, Richa
Student#: 55299891



Paul R. Johnson
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2020 (August 31, 2020 To December 14, 2020)								
LAW	641	001	Crim Just: Invest&Police Prac	Eve Primus	4.00	4.00	4.00	A-
LAW	669	001	Evidence	Richard Friedman	4.00	4.00	4.00	A-
LAW	708	001	Local Government	Eli Savit	2.00	2.00	2.00	A
LAW	719	001	Good with Words	Patrick Barry	1.00		1.00	S
			Storytelling					
LAW	799	001	Senior Judge Seminar	Ted Becker	2.00		2.00	S
LAW	900	288	Research	David Moran	2.00	2.00	2.00	A
Term Total				GPA: 3.800	15.00	12.00	15.00	
Cumulative Total				GPA: 3.683		24.00	44.00	
Winter 2021 (January 19, 2021 To May 06, 2021)								
LAW	643	001	Crim Procedure: Bail to Post Conviction Review	Barbara Mcquade	3.00	3.00	3.00	B+
LAW	687	001	Immigration and Nationality	David Thronson	3.00	3.00	3.00	A-
LAW	799	001	Senior Judge Seminar	Ted Becker	2.00		2.00	S
LAW	900	288	Research	David Moran	1.00	1.00	1.00	A
LAW	920	001	Civil-Criminal Litigation Clnc	David Santacroce	4.00	4.00	4.00	A
			Allison Freedman					
			Mira Edmonds					
LAW	921	001	Civil-Criminal Litig Clnc Sem	David Santacroce	3.00	3.00	3.00	A
			Allison Freedman					
			Mira Edmonds					
Term Total				GPA: 3.785	16.00	14.00	16.00	
Cumulative Total				GPA: 3.721		38.00	60.00	

Continued next page >

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL

Control No: E183792701

Issue Date: 06/01/2021

Page 3

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Bijlani, Richa
Student#: 55299891



Paul R. Johnson
University Registrar

				Credit	
				Load	Graded
				Towards	
Subject	Course Number	Section Number	Course Title	Instructor	Hours
Fall 2021 (August 30, 2021 To December 17, 2021)					
Elections as of: 06/01/2021					
LAW	634	001	Water Wars/Great Lakes	Andrew Buchsbaum	3.00
LAW	677	001	Federal Courts	Leah Litman	4.00
LAW	980	164	Advanced Clinical Law	David Santacroce	3.00

End of Transcript
Total Number of Pages 3

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL

University of Michigan Law School Grading System

Honor Points or Definitions

Through Winter Term 1993		Beginning Summer Term 1993	
A+	4.5	A+	4.3
A	4.0	A	4.0
B+	3.5	A-	3.7
B	3.0	B+	3.3
C+	2.5	B	3.0
C	2.0	B-	2.7
D+	1.5	C+	2.3
D	1.0	C	2.0
E	0	C-	1.7
		D+	1.3
		D	1.0
		E	0

Other Grades:

- F Fail.
- H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.
- I Incomplete.
- P Pass when student has elected the limited grade option.*
- PS Pass.
- S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)
- T Mandatory pass when student is transferring to U of M Law School.
- W Withdrew from course.
- Y Final grade has not been assigned.
- * A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

Official Copies

An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499

UNIVERSITY OF MICHIGAN
LAW SCHOOL

RICHARD D. FRIEDMAN
Alene and Allan F. Smith Professor of Law

TELEPHONE: (734) 647-1078
E-MAIL: rdfrdman@umich.edu

June 04, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I understand that Richa Bijlani is applying to you for a clerkship. I know her quite well, and I think very highly of her. I'm delighted to recommend her.

Richa is from metropolitan Detroit. She did her undergraduate degree at Vanderbilt, where she majored in anthropology, with an orientation towards neuroscience. She did a fascinating and enterprising thesis on the brains of six different species, including humans and chimps. She loved the field, and she credits it with developing skills in critical thinking, writing, identifying and analyzing patterns in human interaction and organization, and a sensitivity to ethnic and cultural differences, all of which will be valuable to her in a clerkship. Ultimately, she decided that she did not want to spend her career by herself in front of a microscope looking at brains; she wanted to work with actual people.

While in college, Richa spent a semester teaching English in a small village in the Peruvian Andes. With some open time after college, she returned to South America and spent seven months roaming around, working on farms in exchange for room and board. (She and a friend also did a seven-day backpacking trip in the Andean wilderness. Though she has a lot of experience in the backcountry, they got lost for a while. I found the story chilling to hear, but it worked out OK.) Along the way, she learned from one farmer how unregulated salmon farming had not only hurt local biodiversity but threatened the livelihoods of many indigenous fishermen. She looked into the matter and learned some of the international human rights facets of the matter. Thinking about how the law might address such complex legal problems deepened her inclination to go to law school.

We were able to lure Richa to Michigan with the aid of a merit scholarship, and she has richly justified the decision to award it to her. Richa was a student in my Civil Procedure class in her first semester here, and in my Evidence class in her third. She earned an A- in both classes, which is somewhat below her GPA; her grades have been both very good and very consistent. In Evidence, she got the highest A- in the class, and one of her quizzes was *the* highest in the class. I found her to be not only a conscientious student but an active and inquisitive one. She is also tenacious. In Evidence, I usually give an extra-credit problem that involves logic and probability. I tell students I'll go back and forth with them as many times as it takes until they get it right, if they so choose. Many students find it difficult and give up before they get it just right. But not Richa. She was determined to get it right, and she did.

Outside of class, Richa has been a blur of activity. I have no idea where she gets the time. I'll just mention two. First, she is Articles Editor of our *Journal of Law Reform* – a job that requires a great deal of academic sophistication – and she has completed a polished draft of a Note arguing for a right to unanimous jury verdicts in capital sentencing. Second, she has been co-chair for faculty donations of our Student Funded Fellowships. It is hard to convey what a job this is, but SFF runs a huge auction every year to support students in low-income and no-income summer work. The heart of the auction is items contributed by faculty members – for example, I'll be joining a group of students for a trivia night and taking another to a Detroit Tigers game. So Richa had to recruit items from faculty, a very delicate task, and figure how to present them to maximum effect. She did a terrific job, and the auction, even in the midst of the pandemic, was a tremendous success.

Richa has always been an excellent writer; I say always because a high school essay of hers was published in a national anthology of best scholastic writing. That essay shows remarkable talent and maturity of thought, and also speaks of her reliance

Richard Friedman - rdfrdman@umich.edu - 734-647-1078

on “the power of words.” Richa is precise, careful, and graceful. She mounts an argument well. I have no doubt she will draft high-quality judicial opinions from the very start of a clerkship.

Personally, Richa is a pleasure. She is charming, good natured, and good humored. She takes constructive criticism very well; she always wants to improve. I would welcome an opportunity to work with her.

Richa is committed to working in the public service; she says that when she spent a few months leading backpacking survival trips with troubled teens – her first assignment was with a group of boys who had been diagnosed with oppositional defiance disorder – she learned that she wanted to advocate for people who couldn't afford to navigate the system. She was one of ten students to receive our Dean's Public Service Fellowship for this summer. I was chair of the committee that awarded the fellowships, and I can tell you that the applicant pool was a large and impressive group of students who had demonstrated a strong commitment to public service. Richa is hoping to start her career as a public defender; over the long term, she is also interested in civil rights litigation. She spent last summer in one PD office, and is spending this summer in another. And in between, she has gotten a good deal of other litigation experience, both civil and criminal, working both in our general litigation clinic and for our local legal aid office. (I have no idea where she gets the hours.) She'll be very well prepared for a clerkship.

I hope I've said enough to convey why I am so high on Richa. But if there is anything further I can tell you about her, please do not hesitate to write or call.

Sincerely,

Richard D. Friedman

Richard Friedman - rdfrdman@umich.edu - 734-647-1078

June 01, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I write to enthusiastically recommend Richa Bijlani for a clerkship with the Court. She is a smart and compassionate woman who I am confident would make an excellent clerk.

Richa was my student in the Civil-Criminal Litigation Clinic here at the University of Michigan Law School in the winter of 2021. During that time she practiced law under my supervision as a "first chair" attorney. She worked on a variety of cases, some simple, some more complex. Enrollment in the Clinic also involved 4 hours of class each week thus giving me a great opportunity to observe her at work in a variety of contexts. In both class and practice, Richa excelled, so much so that she is one of a few selected students I invited back for a second term as an advanced student to work on more complicated cases.

Richa came to the clinic with a strong commitment to public service and a resume that demonstrated it. Her work history is deep for a person her age and her gap year clearly paid dividends. It all immediately showed. She was quick to collaborate in an office environment and work through problems before seeking supervision. Her thinking was sharp, her work thorough and timely. She has a maturity and grace beyond her years with her clients, opposing counsel, and, frequently, judges in often very loaded and high-stakes situations.

Richa (and her partner) took on a complicated no-fault case that required a fairly substantial brief in a field she knew nothing about and, later, oral argument against a very seasoned attorney. Her research was impeccable. Her writing well above the median and increasingly tighter and more mature as the semester went on. She is easy to talk to and, if anything, a tad soft spoken. But put her in front of a room and she owns it. Her 10 minute or so oral argument before a hot bench was one of the best I've seen from a student in 21 years of litigating with them. She did not falter or fluster under questioning, was assertive where she needed to be, and was on target, concise and to the point. Her potential seems unlimited.

In short, Richa is a gifted student and, I believe, will be a gifted lawyer. She was a true pleasure to work with and very well respected among her classmates. I firmly believe that, if given the chance, she will make an excellent clerk.

If you need more or different information, please feel free to call or e-mail me.

Sincerely yours,

David A. Santacroce, Esq.
Clinical Professor of Law
Director, Civil/Criminal Litigation Clinic

David Santacroce - dasanta@umich.edu - 734-763-4319

University of Michigan Law School
625 S. State St.
Ann Arbor, MI 48109

Eve Brensike Primus
Yale Kamisar Collegiate Professor of Law
ebrensik@umich.edu

June 09, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

Richa Bijlani is a strong and careful thinker, a skilled researcher and writer, and a hardworking person. I am confident that she will be a wonderful law clerk and am pleased to write this letter in support of her application to clerk in your chambers.

I had the pleasure of having Richa as a student in my criminal procedure course in the fall of her second year of law school. Even though the class was conducted on Zoom and had almost ninety students, Richa stood out. She actively contributed to class discussions with insightful comments and questions. I knew that I could always call on her to move the discussion along when others were struggling. She had a way of getting right to heart of the question and could slice and dice the legal doctrine with ease. She was one of the best students in the class in terms of classroom performance.

Richa's exam performance was comparable to her classroom performance. I give students a three-hour, in-class examination designed to test both their knowledge of the applicable law and their understanding of the policies behind it. Richa was adept at analyzing precedent and applying it to new factual scenarios. And she wrote clearly and concisely, getting right to the important points. The clarity with which she wrote and the nuance that she achieved in her answers was impressive and makes me confident that she will be able to distill complicated issues that come through your chambers and write detailed and crisp legal analyses. Given her performance in my class, I was not surprised to learn that Richa has performed well in her other classes and is on her way to graduating with honors.

Richa is also a talented researcher and writer. After her 1L legal research and writing course, her professor was so impressed by her that she was invited to return as a teaching assistant for that course the following year. She was also selected by her peers to be an Articles Editor for the Michigan Journal of Law Reform in recognition of her intellect and writing/editing skills. Even before coming to law school, Richa was an avid creative non-fiction writer. She has publications in the American Association of Physical Anthropologists and the Alliance for Young Artists & Writers. I have no doubt that you would find her research and writing skills invaluable when drafting memoranda and judicial opinions.

I have also gotten to know Richa outside of the classroom because she has been an active member of an organization that I run at the law school for aspiring public defenders (MDefenders). Richa is a delightful person to work with. She is smart, thoughtful, and an independent thinker while also being respectful, kind, and interesting. I think you would enjoy having her in chambers.

Richa hopes to work as a trial litigator in a public defender office after clerking. She is a dedicated public servant who believes in giving back to the community. While attending law school, Richa has spent time volunteering for Legal Services of South Central Michigan, working on the Civil Rights Litigation Clearinghouse, and representing clients as a student attorney in the Civil-Criminal Litigation Clinic. She spent her 1L summer at the New Orleans Public Defender's Office and will spend this summer appearing on the record as a certified student attorney in the Colorado Public Defender's Office. Richa hopes to clerk after law school to hone her research and writing skills, see different litigation styles, and learn what influences judicial decisionmaking before heading into the indigent defense world. I have every confidence that she will be a wonderful law clerk and public defender.

In short, I have nothing but positive things to say about Richa. I think she will be an excellent law clerk to whomever is fortunate

Eve Brensike Primus - ebrensik@umich.edu - 734-615-6889

enough to hire her. Please don't hesitate to contact me should you require any additional information.

Sincerely,

Eve Brensike Primus

Eve Brensike Primus - ebrensik@umich.edu - 734-615-6889

WRITING SAMPLE

The attached writing sample is an excerpt from a supervisory writ on a police stop issue I wrote as a summer law clerk at Orleans Public Defenders in 2020. I edited this sample to include only the portions researched and written by me. The substance of this writing sample has not been edited by anyone else. To preserve confidentiality, I have changed the names of the individuals involved. Citations to exhibits have also been omitted. I received permission from my supervising attorney to use this writing sample.

STATEMENT OF THE CASE

On September 24, 2019, New Orleans Police Department (NOPD) officers illegally seized Mr. John Doe for simply sitting in a parked car. Law enforcement stopped Mr. Doe in a motel parking lot without reasonable articulable suspicion that Mr. Doe had committed, was committing, or was about to commit a crime. After illegally seizing Mr. Doe, officers conducted an unconstitutional search of Mr. Doe's vehicle while Mr. Doe and his passenger remained handcuffed and out of reaching distance of the vehicle. During this warrantless search, officers recovered a small amount of heroin from a cereal box inside of Mr. Doe's vehicle. Mr. Doe was charged by bill of information on November 14, 2019 with possession of fewer than two grams of heroin, a violation of La. R.S. 40:966. At his arraignment on November 18, 2019, Mr. Doe pleaded not guilty.

At the hearing on Mr. Doe's motion to suppress on December 6, 2019, the trial court heard NOPD Officer Joe Smith's testimony. Officer Smith testified that on September 24, 2019, officers activated their patrol unit lights and stopped behind a PT Cruiser parked at the Motel Six located at 4180 Old Gentilly Rd. Citation omitted. The hotel management had previously requested that officers conduct "residency checks" to make sure that people in the parking lot resided at the hotel "due to drug activity and prostitution." Citation omitted. With only that knowledge, the officers "saw two individuals sitting in a car that was parked" at 9:47 AM and immediately "pulled in behind the vehicle." Citation omitted.

Mr. Doe sat in the driver's seat of that vehicle. Citation omitted. Even if the present officers had been able to make out Mr. Doe or his passenger in greater detail than just "two individuals," Officer Smith would not have recognized Mr. Doe: Officer Smith did not know Mr. Doe before that day, and law enforcement had not received any calls specifically about Mr. Doe

or anyone who matched his description. Citation omitted. Only after exiting the police unit and approaching Mr. Doe's vehicle did Officer Smith notice Mr. Doe eating out of a Wheaties cereal box that morning. Citation omitted. The officers then asked Mr. Doe and his passenger if they were residents at the hotel, and both individuals advised that they were not. Citation omitted.

During the conversation, Officer Smith's partner saw a hypodermic needle in the passenger's pocket in plain view. Citation omitted. Law enforcement then "[r]emoved the passenger and Mr. Doe from the vehicle, placed them in handcuffs, [and] read them their rights." Citation omitted. The officers put Mr. Doe in the back of a squad car while the passenger stood a few feet away. Citation omitted. Afterward, the officers searched the vehicle. Citation omitted. At some point during the search, but still while Mr. Doe was handcuffed in the back of a squad car, Officer Smith located a small bag of heroin in the cereal box. Citation omitted.

Following Officer Smith's testimony and the State's and the defense's arguments, the trial court denied Mr. Doe's motion to suppress evidence. Citation omitted. Defense counsel noted her intent to seek a supervisory writ on the issue, and the court set a return date of July 14, 2020. Citation omitted. This writ timely follows.

LAW AND ARGUMENT

The trial court erred in denying Mr. Doe’s Motion to Suppress Physical Evidence because the prosecution failed to prove the admissibility of evidence recovered from a warrantless search.

The right to be free from unlawful seizures stems from the United States Constitution, the Louisiana Constitution, and the Louisiana Code of Criminal Procedure. The Fourth Amendment provides that all people have the right to be free from unreasonable searches and seizures. U.S. Const. amend IV. Article 1, § 5 of the Louisiana Constitution provides even broader protections by guaranteeing every person security “in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasion of property.” A warrantless search is *per se* unconstitutional with only narrowly defined exceptions defeating this presumption. Katz v. United States, 389 U.S. 347, 357 (1967); State v. Zielman, 384 So. 2d 359, 363 (La. 1980). Further, the State maintains the burden of proving the admissibility of any evidence seized without a warrant. See La. C. Cr. P. Art. 703(D).

Here, the State failed to meet its burden. First, Mr. Doe was entitled to Fourth Amendment and Article I, § 5 protections when this seizure occurred. Second, the State failed to show that officers had the level of requisite suspicion required to intrude on Mr. Doe’s fundamental right to be secure in his person and property. Officers recovered the physical evidence as a result of a seizure based *solely* on Mr. Doe’s presence in an area of reported criminal activity.

Third, even if officers possessed the requisite levels of suspicion to stop and arrest Mr. Doe, searching Mr. Doe’s vehicle violated his Fourth Amendment rights under Arizona v. Gant because Mr. Doe could not have gained access to the vehicle after being handcuffed and placed in a police cruiser. Neither Mr. Doe nor his passenger was within reaching distance of the car

when officers conducted the warrantless search. Accordingly, the trial court erred in denying Mr. Doe's motion to suppress.

I. PHYSICAL EVIDENCE RETRIEVED BY THE POLICE MUST BE SUPPRESSED BECAUSE OFFICERS DID NOT HAVE REASONABLE ARTICULABLE SUSPICION TO SEIZE MR. DOE.

To have lawfully seized Mr. Doe under the Fourth Amendment to the United States Constitution and Article I, § 5 of the Louisiana Constitution, the officers were required to possess the requisite level of suspicion of criminal activity. See La. C. Cr. P. Art. 215.1(A). This Court has held that when officers fail to establish that standard, courts must suppress evidence recovered as a result of the unconstitutional search or seizure. See, e.g., State v. McClendon, 133 So. 3d 239, 245, 249 (La. App. 4th Cir. 2014) ("The social cost of suppressing the evidence is significantly outweighed by the need to deter the police from effectuating investigatory stops without reasonable suspicion.").

A. Mr. Doe was seized by police when officers activated their squad car lights and stopped their car behind Mr. Doe's parked vehicle, effectively blocking him in.

The police effected a seizure under both the Fourth Amendment and Article I, § 5 at the moment officers used their cruiser to block in Mr. Doe's vehicle. While police officers may briefly stop suspicious persons and make reasonable inquiries, such an investigatory stop may still constitute a seizure. McClendon, 133 So. 3d at 246 (citing State v. Moreno, 619 So. 2d 62, 65 (La. 1993)). See also Terry v. Ohio, 392 U.S. 1, 16 (1968) ("[W]hen a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person."). Under the U.S. Constitution, a seizure occurs when a reasonable person would not have felt free to terminate the encounter. Florida v. Bostick, 501 U.S. 429, 439 (1991). Louisiana law includes

as a seizure not only the moment when the individual is actually stopped but also when an actual stop of the individual is imminent. State v. Tucker, 626 So. 2d 707, 712 (1993).

This Court has suggested that completely blocking in a person's vehicle with a patrol unit constitutes a seizure as it imposes an "actual restraint" on a person's movement. McClendon, 133 So. 3d at 248. In McClendon, officers used a police unit to block the defendant's vehicle such that it could not proceed down the road. Id. at 243. This Court noted in McClendon that boxing in a vehicle is "vastly different from a police officer approaching a vehicle to simply ask some casual questions to the driver." Id. at 248. As a result, the seizure in McClendon occurred at the moment the police unit completely restricted the vehicle's movement. Id.

Alternatively, the Louisiana Supreme Court has suggested that police boxing in a vehicle amounts to a seizure under Article I, § 5 because an actual stop of the vehicle occupants is imminent. In State v. Broussard, the Louisiana Supreme Court noted that all members of this Court agreed that the police seized respondent when "the officers identified themselves, ordered him to stop, and boxed in his Jeep with their patrol vehicles, one positioned in front of the respondent to bring him to a stop and the other positioned behind the Jeep to prevent him from backing out." 816 So. 2d 1284, 1285 (La. 2002). The Louisiana Supreme Court found that no reasonable person would have felt free to leave under such circumstances. Id. Similarly, in State v. Zielman, the Louisiana Supreme Court held that police seized the defendants when patrol cars with flashing lights pulled in front of and behind the defendants' vehicle. 384 So. 2d 359, 362 (La. 1980). The court found that officers' attempt to block in the defendants' vehicle appeared to have the "very purpose of preventing the defendants from avoiding the officers by driving away." Id.

In Mr. Doe’s case, police seized Mr. Doe under both the Fourth Amendment and Article I, § 5 at the moment officers directly restricted Mr. Doe’s movement by pulling up behind his vehicle. While in Broussard and Zielman patrol units pulled in front of and behind the vehicle, officers here did not need to position another unit in front of Mr. Doe’s car. Mr. Doe could not have driven forward because his vehicle already occupied a confined parking spot. As a result, the officers only needed one vehicle directly behind Mr. Doe’s to create the same blockade effect officers created in Broussard and Zielman. Similar to McClendon where officers blocked the defendant’s vehicle from proceeding down the road, the single patrol unit functioned as an “actual restraint” on Mr. Doe. 133 So. 3d at 248. Therefore, law enforcement seized Mr. Doe when officers stopped a police cruiser behind Mr. Doe’s vehicle.

Even if the officers’ blocking in Mr. Doe’s vehicle did not amount to an actual restraint, such actions unmistakably indicated that a stop was imminent. Similar to Zielman, where officers had their lights flashing at the moment they seized the defendant, Officer Smith testified that the officers here activated their patrol unit lights and “pulled in behind the vehicle.” Citation omitted. Like in Broussard where law enforcement identified themselves, the patrol unit lights identified Officer Smith’s vehicle as a police cruiser. By removing Mr. Doe’s ability to avoid an encounter with police, officers at least indicated that a stop was imminent.

Further, officers’ blocking in Mr. Doe’s vehicle surpassed a mere attempt to “ask some casual questions to the driver.” McClendon, 133 So. 3d at 248. Officer Smith testified that he approached Mr. Doe’s vehicle to ask Mr. Doe and his passenger if they were hotel residents. As in McClendon, where this Court found that officers did not approach a vehicle to ask casual questions when they blocked the defendant’s vehicle, boxing in Mr. Doe’s car is “vastly different” from conducting a residency check. 133 So. 3d at 248. The officer’s stated purpose of

conducting a residency check is immaterial – stopping a patrol unit behind Mr. Doe’s vehicle unequivocally indicated that officers had the “very purpose of preventing the [occupants] from avoiding the officers by driving away.” Zielman, 384 So. 2d at 362. Therefore, officers escalated the residency check to a seizure the moment they blocked in Mr. Doe’s vehicle.

The police’s turning on the patrol unit’s lights and blocking in Mr. Doe’s car created a situation in which no reasonable person would have felt free to terminate the encounter. In fact, such a person *could not* have avoided the officers by driving away due to the blockade. As a result, the officers intruded on Mr. Doe’s rights under the Fourth Amendment and Article I, § 5 at the moment they pulled in behind his vehicle. Accordingly, the trial court erred in denying Mr. Doe’s motion to suppress.

B. Officers did not possess reasonable articulable suspicion for an investigatory stop at the moment officers seized Mr. Doe.

Officers did not meet the requisite level of suspicion for effecting a stop when they decided to investigate Mr. Doe merely because he was sitting in a parked car. Officers may briefly stop a person in public only if they have “reasonable, articulable suspicion” before the stop that criminal activity has occurred, is occurring, or is about to occur La. C. Cr. P. Art. 215.1(A); Terry v. Ohio, 392 U.S. 1 (1968). An investigatory stop must be justified at its inception by a minimum of information sufficient to establish a belief that the person is or is about to be, engaged in criminal activity, or there are reasonable grounds to believe that the person is wanted for past criminal conduct. State v. Moreno, 619 So. 2d 62, 65 (La. 1993); State v. Francis, 60 So. 3d 703, 709 (La. App. 4th Cir. 2011).

In determining whether an investigatory stop was justified, the reviewing court must take into account the totality of the circumstances. State v. Huntley, 708 So. 2d 1048, 1049 (La.

1998). While the court must give due weight to the specific, reasonable inferences that a law enforcement officer is entitled to draw from the facts based on experience and training, an officer must “articulate something more than an inchoate and unparticularized suspicion or ‘hunch.’” United States v. Sokolow, 490 U.S. 1, 7 (1989) (citing Terry, 392 U.S. at 27). See State v. Temple, 854 So. 2d 856, 859-60 (La. 2003); State v. Williams, 621 So. 2d 199, 201 (La. App. 4th Cir. 1993). The court must measure the officer’s justification for a stop against a “standard [that] is [] purely objective [and] that does not take into account the subjective beliefs or expectations of the detaining officer.” State v. Waters, 780 So. 2d 1053, 1056 (La. 2001). Further, Louisiana law has repeatedly established that officers must rely on more than just an individual’s presence in an area of expected crime alone to establish reasonable articulable suspicion. See, e.g., McClendon, 133 So. 3d at 247-48 (“[A]n individual’s presence in an area of expected crime, standing alone, is insufficient to support a reasonable, particularized suspicion that a person is involved in criminal activity.”). See also State v. Sneed, 680 So. 2d 1237, 1239 (La. 4th Cir. 1996) (“[B]rief presence [at a residence suspected of drug activity] without more, was equally consistent with innocent behavior as criminal conduct. Consequently . . . there were not sufficient articulable facts to justify [the defendant’s] initial detention.”).

Information that may contribute to reasonable articulable suspicion includes officers witnessing the individual engage in criminal activity, officers having prior knowledge about the defendant, and the area’s reputation. See State v. Chopin, 372 So. 2d 1222, 1244 (1979); McClendon, 133 So. 3d at 247-48. In Chopin, the Louisiana Supreme Court held that without the officers having witnessed any criminal activity or knowing the defendant, and without any warrants issued, the observation that the defendant became “kind of nervous” upon seeing police did not give officers reason to suspect that the defendant had committed, was committing, or was

about to commit a crime. 372 So. 2d at 1225. Similarly, in McClendon, officers found that the defendant appeared “kind of anxious” when police approached and “kind of hurried to get from the area” at an intersection with a high crime reputation. 133 So. 2d at 249. This Court held that the defendant’s mere presence in a high crime area, even combined with the officers’ observations regarding the defendant’s demeanor, did not support a reasonable, particularized suspicion that the defendant was involved in criminal activity. Id. at 247-48.

This Court has further suggested that when police rely on a general tip or request to surveil an area for crime, officers must at least witness suspicious activity before effecting a stop. See State v. Boson, 778 So. 2d 687, 689 (2001). In Boson, officers investigated a hotel based on drug trafficking complaints that implicated a “white Ford LTD . . . and two black males ‘that were supposed to be operating narcotics’ from the hotel.” Id. at 688. This Court found that without observing any suspicious activity, the officers’ “vague knowledge that drugs were being sold at some undetermined time, and that two black men who had a white LTD were involved in the transactions” did not give police reasonable suspicion to stop the two men upon seeing them. Id. at 694.

Even when officers are investigating complaints of illegal narcotics activity in a high crime area and recognize an individual, officers must still observe suspicious behavior before stopping an individual. See State v. Stan, 703 So. 2d 83, 86-87 (1997). The officers in Stan stopped the defendant because law enforcement observed the defendant parked in a vehicle in a high crime area and recognized the defendant from a previous narcotics arrest. Id. at 86. The officers’ testimony in Stan did not establish that the two men were speaking, engaging in physical contact, or making any furtive, suspicious, or startled movements upon the police’s approach. Id. This Court held that the lower court properly found the stop unconstitutional

because officers' testimony did not include any indication that the officers observed an apparent drug transaction at any time. Id.

In Mr. Doe's case, law enforcement seized Mr. Doe based solely on his mere presence in the area because Officer Smith did not indicate that officers observed any suspicious behavior. Similar to the officers in McClendon who failed to establish reasonable articulable suspicion before blocking in the defendant's vehicle, officers here were required to possess the requisite level of suspicion before pulling in behind Mr. Doe's vehicle. Officer Smith's testimony, however, established no more than that the present officers "saw two individuals sitting in a car that was parked" before activating their lights and pulling in behind the vehicle. Citation omitted. Like the testimony in Chopin that revealed that officers did not witness any criminal activity or know about previously issued warrants, Officer Smith's testimony indicated that officers neither witnessed any activity at all nor identified the vehicle occupants before effecting a stop. Officer Smith's testimony does not even state that the vehicle occupants aroused suspicion by appearing nervous or anxious as did testimony in Chopin and McClendon. The only physical behavior Officer Smith noted in his testimony, that Mr. Doe was eating out of a cereal box, came after police had already stopped Mr. Doe and exited the patrol unit. As a result, officers had no reason to have suspected Mr. Doe had committed, was committing, or was about to commit a crime based on his presence in the area alone.

The hotel management's request for officers to check "if people in the parking lot of that hotel [were] actually residents of the hotel due to drug activity and prostitution" did not satisfy the level of particularity required for reasonable articulable suspicion. Citation omitted. Compared to the similar request in Boson that this Court found too vague to justify stopping the defendant despite including additional details about the vehicle and alleged offenders, officers

here received even less information from the hotel management. Officer Smith admitted that officers had neither received a 911 call specifically about Mr. Doe or someone with a similar description nor received such a call from the hotel management. Officer Smith's general statement that illegal activity occurred on the premises amounts to no more than "vague knowledge that drugs were being sold at some undetermined time" by undetermined individuals. Boson, 778 So. 2d at 694. This vague knowledge alone cannot suffice to justify intruding on Mr. Doe's right to be free from governmental interference.

Further, officers here did not have any previous history of interacting with Mr. Doe specifically that could have contributed to reasonable articulable suspicion that Mr. Doe engaged in criminal activity. Similar to Stan where testimony did not even indicate that the individuals in question spoke to one another, engaged in any physical contact, or made any suspicious movements, Officer Smith's testimony here also included no mention of Mr. Doe or his passenger engaging in any behavior consistent with illegal activity. Unlike the officers in Stan, however, who recognized the defendant from a previous narcotics arrest, Officer Smith testified that he did not know Mr. Doe before the incident in question. Therefore, officers here had even less of a basis to effect a stop than the officers in Stan, whose stop this Court found unconstitutional.

Officers not only did not witness Mr. Doe engage in suspicious behavior but also lacked particularized prior knowledge implicating Mr. Doe in criminal activity. Instead, officers impermissibly relied solely on Mr. Doe's presence in an area with a reputation for crime to effect an investigatory stop. Accordingly, the trial court erred in denying Mr. Doe's motion to suppress.

Applicant Details

First Name	Timothy
Last Name	Blauch
Citizenship Status	U. S. Citizen
Email Address	tjb5ky@virginia.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>1982 Arlington Boulevard, Apt. #11-C</div> <div>City</div> <div>Charlottesville</div> <div>State/Territory</div> <div>Virginia</div> <div>Zip</div> <div>22903</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	7176739479

Applicant Education

BA/BS From	Lebanon Valley College
Date of BA/BS	May 2017
JD/LLB From	University of Virginia School of Law
	http://www.law.virginia.edu
Date of JD/LLB	May 21, 2022
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Virginia Sports & Entertainment Law Journal
	Virginia Journal of International Law
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	Yes
--------------------------------------	-----

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Andrew, Hayashi
ath9f@virginia.edu

Nelson, Caleb
cnelson@law.virginia.edu
(434) 924-7372

Levinstein, Mark
mlevinstein@wc.com

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Timothy J. Blauch
1982 Arlington Boulevard, Apt. #11-C
Charlottesville, Virginia 22903
tjb5ky@virginia.edu | (717) 673-9479

June 14, 2021

The Honorable Elizabeth W. Hanes
U.S. District Court, Eastern District of Virginia
Spottswood W. Robinson III & Robert R. Merhige Jr., U.S. Courthouse
701 East Broad Street, Suite 5318
Richmond, VA 23219

Dear Judge Hanes:

I am a rising third-year student at the University of Virginia School of Law, and I am writing to apply for a clerkship in your chambers in August 2022.

I am enclosing my resume, my law school and undergraduate transcripts, and a writing sample. You will also be receiving letters of recommendation from Professors Andrew Hayashi, Caleb Nelson, and Mark Levinstein. All three professors have said that they would be happy to speak with you directly. If you would like to reach them, Professor Hayashi's telephone number is (434) 243-9125. Professor Nelson's telephone number is (434) 924-7372. Professor Levinstein's number is 202-434-5012.

In addition, both Judge Urbanski and Judge Urbanski's full-time clerk Linda Kring have stated that they would be happy to answer any questions about my time working in Judge Urbanski's chambers. You can reach them at Linda_Kring@vawd.uscourts.gov.

Please let me know if I can provide any further information. I appreciate your consideration.

Sincerely,

Timothy J. Blauch

Timothy J. Blauch

1982 Arlington Boulevard Apt. #11-C, Charlottesville, VA 22903
(717) 673-9479 • tjb5ky@virginia.edu

EDUCATION

University of Virginia School of Law, Charlottesville, VA

J.D., Expected 2022

- GPA: 3.72
- *Virginia Journal of International Law*, Managing Board, Publishing Editor
- *Virginia Sports & Entertainment Law Journal*, Managing Board, Notes Devel. Editor
- Virginia Sports & Entertainment Law Society, Treasurer
- Virginia Sports & Entertainment Law Society, Tulane NBA Competition

Lebanon Valley College, Annville, PA

B.A., Economics, *summa cum laude*, May 2017

- GPA: 3.94; C.F. Joseph Tom Senior Award in Economics Recipient (April 2017)
- Vickroy Scholarship Recipient (50% tuition for top 10% of high school class)
- Member of Phi Kappa Pi Honor Society (Business, Economics, and Accounting)
- Achievement Award in Economics Recipient (April 2016)

EXPERIENCE

MartinWren, P.C., Charlottesville, VA

Summer Intern, May 2021 – Aug. 2021

- Completed monthly and final accounting statements for trusts

University of Virginia School of Law, Charlottesville, VA

Research Assistant for Professor Andrew Hayashi, March 2021 – Aug. 2021

- Conducted research on the taxation of foreign currency transactions through Subpart J of the Internal Revenue Code

United States District Court for the Western District of Virginia, Roanoke, VA

Judicial Intern for the Honorable Michael Urbanski, Chief Judge, July 2020 – August 2020

- Drafted memorandum opinions and bench memoranda in numerous civil cases
- Attended judicial hearings and daily chamber conference meetings

University of Virginia School of Law, Charlottesville, VA

Research Assistant for Professor G.E. White, May 2020 – July 2020

- Conducted research and assisted in preparing book chapters on tort law and the history of American soccer

H&R Block, Myerstown, PA

Tax Professional/Client-Service Professional, December 2018 – April 2019

- Provided tax advice and prepared individual and business tax returns
- Assisted in managing the office, including developing work schedule

Blauch's Tree Service, Lebanon, PA

Self-Employed, April 2018 – August 2019

- Maintained revenue and expense sheets for business and tax purposes
- Developed customer relationships and worked to develop new business

Lebanon Valley College, Annville, PA

Men's Basketball Manager/Statistician, October 2013 – March 2018

- Worked 20-25 hours a week for 5-6 months a year managing a MAC Commonwealth Conference Champion team
- Assisted with gameday travel arrangements and pregame drills

Lebanon Valley College, Annville, PA

Peer Tutor, November 2014 – May 2017

- Led individual and group study sessions for economics and accounting classes

INTERESTS

Sports, Politics, Economics, Public Policy, International Law, Tax Law

Timothy J. Blauch

06/08/2021

Beginning of Law Record

2019 Fall

School:		School of Law		
Major:		Law		
LAW	6000	Civil Procedure	A-	4.0
LAW	6002	Contracts	B+	4.0
LAW	6003	Criminal Law	A-	3.0
LAW	6004	Legal Research and Writing I	S	1.0
LAW	6007	Torts	A-	4.0

2020 Spring

School:		School of Law		
Major:		Law		
LAW	6001	Constitutional Law	CR	4.0
LAW	6005	Lgl Research & Writing II (YR)	S	2.0
LAW	6006	Property	CR	4.0
LAW	6104	Evidence	CR	4.0
LAW	6107	International Law	CR	3.0

2020 Fall

School:		School of Law		
Major:		Law		
LAW	6106	Federal Income Tax	A-	4.0
LAW	7017	Con Law II: Religious Liberty	A	3.0
LAW	7019	Criminal Investigation	A-	4.0
LAW	8811	Independent Research	A-	1.0

2021 Spring

School:		School of Law		
Major:		Law		
LAW	7005	Antitrust	A-	4.0
LAW	7062	Legislation	A-	4.0
LAW	7074	Professional Sports & Law	A	2.0
LAW	8004	Con Law II: Speech and Press	A	3.0

End of Law School Record

Lebanon Valley College

Official Academic Transcript

Blanch, Timothy James

1686245

16 Feb 2018

Page: 1 of 1

COURSE	Course Title	CRD	GRD	GRDPT	COURSE	Course Title	CRD	GRD	GRDPT
13/FA	FALL 2013 (08/26/2013 to 12/14/2013)				16/SP	SPRING 2016 (01/18/2016 to 05/12/2016)			
ENG111	ENGLISH COMMUNICATIONS I	3.00	A	12.00	ACT452	CORPORATE TAXATION	3.00	A	12.00
ECN101	PRINCIPLES OF MICROECONOMICS	3.00	A	12.00	BUS285	ORGANIZATIONAL COMMUNICATIONS	3.00	A	12.00
ACT161	FINANCIAL ACCOUNTING	3.00	A	12.00	BUS340	PRINCIPLES OF MARKETING	3.00	A	11.01
BUS130	MODERN BUSINESS ORGANIZATIONS	3.00	B+	9.99	ECN333	GAME THEORY: ECON APPLICATIONS	3.00	A	12.00
HIS125	US HISTORY TO 1865	3.00	A-	11.01	ECN405	APPLIED ECONOMETRICS	3.00	A	12.00
	Term GPA 3.800	Credit	15.00		BUS461	CORPORATE FINANCE	3.00	A	12.00
	Cum GPA 3.800	Credit	15.00			Term GPA 3.945	Credit	18.00	
						Cum GPA 3.925	Credit	93.00	
14/SP	SPRING 2014 (01/13/2014 to 05/08/2014)				16/S2	SUMMER 2016 SESSION II (07/05/2016 to 08/15/2016)			
MAS150	FINITE MATHEMATICS	3.00	A	12.00	REL140	ENCOUNTERING WORLD RELIGIONS	3.00	A	12.00
ENG112	ENGLISH COMMUNICATIONS II	3.00	A	12.00		Term GPA 4.000	Credit	3.00	
BUS160	COMPUTER APPLICATIONS	3.00	A	12.00		Cum GPA 3.928	Credit	96.00	
ECN102	PRINCIPLES OF MACROECONOMICS	3.00	A	12.00					
ACT162	MANAGERIAL ACCOUNTING	3.00	A	12.00	16/FA	FALL 2016 (08/29/2016 to 12/16/2016)			
	Term GPA 4.000	Credit	15.00		GMN101	ELEMENTARY GERMAN I	3.00	A	12.00
	Cum GPA 3.900	Credit	30.00		MSC100	INTRODUCTION TO MUSIC	3.00	A	12.00
14/FA	FALL 2014 (08/25/2014 to 12/13/2014)				PSY111	GENERAL PSYCHOLOGY I	3.00	A	12.00
MAS161	CALCULUS I	3.00	A-	11.01	PSY111L	GENERAL PSYCHOLOGY I LAB	1.00	A	4.00
ACT353	COST ACCOUNTING	3.00	A	12.00	REL120	RELIGIOUS DIVERSITY IN AMERICA	3.00	A	12.00
MAS170	ELEMENTARY STATISTICS	3.00	A	12.00	REL313	THE SEARCH FOR JESUS	3.00	A	12.00
ECN201	INTER. MICROECONOMIC ANALYSIS	3.00	A	12.00	IME210	THEORY & PRACTICE OF TUTORING	1.00	P
ACT251	INTERMEDIATE ACCOUNTING I	3.00	A	12.00		Term GPA 4.000	Credit	17.00	
	Term GPA 3.934	Credit	15.00			Cum GPA 3.938	Credit	113.00	
	Cum GPA 3.911	Credit	45.00						
15/SP	SPRING 2015 (01/12/2015 to 05/07/2015)				17/SP	SPRING 2017 (01/16/2017 to 05/11/2017)			
POL110	ARCHITECTURE OF AMERICAN POWER	3.00	A-	11.01	BUS372	BUSINESS LAW II	3.00	PH
ECN321	PUBLIC FINANCE	3.00	A	12.00	ECN331	INTERNATIONAL FINANCE	3.00	A	12.00
ACT252	INTERMEDIATE ACCOUNTING II	3.00	A	12.00	GMN102	ELEM. GERMAN: LANG. & CULTURE	4.00	A	16.00
ECN202	INTERMEDIATE MACRO. ANALYSIS	3.00	A	12.00	PHL210	ETHICS	3.00	A	12.00
BUS230	PRINCIPLES OF MANAGEMENT	3.00	A-	11.01	POL392	ST: POL. OF THE MIDDLE EAST	3.00	A	12.00
	Term GPA 3.868	Credit	15.00		BUS485	STRATEGIC MANAGEMENT	3.00	A-	11.01
	Cum GPA 3.901	Credit	60.00			Term GPA 3.938	Credit	19.00	
						Cum GPA 3.938	Credit	132.00	
15/FA	FALL 2015 (08/31/2015 to 12/19/2015)								
ACT460	ACCOUNTING INFORMATION SYSTEMS	3.00	A	12.00		Degree Received: Bachelor of Arts			
ECN410	SENIOR SEMINAR	3.00	A	12.00		Date Conferred.: 05/13/2017			
ACT451	INDIVIDUAL INCOME TAX	3.00	A	12.00		Majors.....: Economics			
BUS361	PRINCIPLES OF FINANCE	3.00	A	12.00		Accounting			
BUS371	BUSINESS LAW I	3.00	A	12.00		Minors.....: Business Administration			
	Term GPA 4.000	Credit	15.00			Honors.....: Summa Cum Laude			
	Cum GPA 3.920	Credit	75.00			GPA.....: 3.938			
						End of official record.			

Continued on next Column/Page

unofficial to timblanch@yahoo.com

Jeremy A. Maisto, Registrar

THIS OFFICIALLY SEALED AND SIGNED TRANSCRIPT IS PRINTED ON BLUE SECURITY PAPER.
A RAISED SEAL IS NOT REQUIRED. SEE REVERSE SIDE FOR A TRANSCRIPT KEY.

THE INFORMATION ON THIS TRANSCRIPT IS CONFIDENTIAL AND CANNOT BE
RELEASED TO ANOTHER PARTY WITHOUT THE WRITTEN CONSENT OF THE STUDENT.

June 16, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

RE: Clerkship Letter of Recommendation for Tim Blauch

Dear Judge Hanes:

I am pleased to write in support of Tim Blauch as he applies to you for a clerkship. Tim was a student in my Federal Income Tax course during the first semester of his 2L year and will be my research assistant during the summer of 2021.

Tim did extremely well in my course, and indeed better than is apparent from his A- grade. Tim had the 5th highest score on the final exam out of 68 students and was reliably well-prepared and thoughtful. As part of my evaluation, I conducted oral examinations midway through the semester. These exams allowed me to assess how well students can communicate their analysis and how adept they are at responding to questions in real-time. Tim showed himself to be a clear oral communicator.

This summer, Tim will conduct research for me on the tax treatment of transactions in foreign currencies and “cryptocurrencies” such as Bitcoin. He has only just begun his work, but my impression is that he is reliable, conscientious and thorough and that he will be able to manage this difficult area of tax law. I have been very impressed by his intelligence and the quality of his written and oral communication.

In terms of his academic performance more generally, Tim has earned very good grades throughout his first two years at UVA Law across a range of subjects and notwithstanding the stresses associated with the pandemic. Although he—like all of our students—took courses during Spring 2020 on a credit/no credit basis, he has done well across a wide range of courses from Federal Income Tax to Religious Liberty.

On a personal note, Tim is friendly and hard-working. He ambitious but lacks pretense and is highly motivated. I expect that he would do his best work for you and I hope you will give him strong consideration. If you have any questions, please feel free to contact me.

Sincerely,

Andrew Hayashi

Professor Andrew Hayashi
University of Virginia School of Law
580 Massie Road
Charlottesville VA 22903
ahayashi@virginia.edu
(434) 243-9125

Hayashi Andrew - ath9f@virginia.edu

June 14, 2021

The Honorable Elizabeth Hanes
 Spottswood W. Robinson III & Robert R. Merhige,
 Jr., U.S. Courthouse
 701 East Broad Street, 5th Floor
 Richmond, VA 23219

Dear Judge Hanes:

Timothy Blanch, a rising third-year student at the University of Virginia School of Law, has asked me to write in support of his application to clerk for you following his graduation in 2022. I am very pleased to do so. Tim has taken two of my classes (Civil Procedure in his first year and Legislation in his second), and he did well in both. He impresses me as a serious and talented student who will make an excellent lawyer.

At least in my opinion, Civil Procedure is the hardest course in the first-year curriculum. The course begins with a succession of topics that are important to lawyers but that are wholly unfamiliar to most entering students—the subject-matter jurisdiction of the federal district courts, the personal jurisdiction of both state and federal courts, and statutory limitations on venue. After students learn which courts can hear which cases, the course covers the history and modern development of the Erie doctrine (another topic that the typical entering student has never considered). We then study the Federal Rules of Civil Procedure in detail, examining how lawsuits proceed in federal district court from the initial filing of a complaint to the eventual entry of judgment. To wrap up the semester, we cover doctrines about the preclusive effects of judicial judgments.

Collectively, those topics draw upon many different types of law that interact with each other in subtle and complicated ways. To make matters worse, I try to cover an enormous amount of material in a single semester; I assign a lot of reading, and the reading that I assign is often dense and technical. As a result, students face the twin challenges of having to master many details and to understand the big picture.

None of that was any problem for Tim. I based my grades in Civil Procedure entirely on the final exam—four multipart essay questions that spanned the course. Tim did well across the board, earning an A–. I have re-read his exam in preparation for writing this letter, and I remain impressed. Each of his essays homed in on the right issues and analyzed them well. Where questions implicated judicial precedents, Tim spotted the relevant cases, recognized possible distinctions, and drew sensible conclusions. Where questions implicated specific rules, Tim cited the precise provisions that were relevant and discussed their application. Tim's essays showed hard work and real understanding of the course material. They also were well written, with crisp prose and clear organization.

Tim accomplished the same feat the following year in Legislation. That course is all about statutory interpretation. After an introductory unit covering age-old questions about the relationship between text and purpose, the course examines various topics that federal courts confront every day. Among other things, we study the most important canons of construction, the interplay between statutes and other sources of law (including the Constitution, other statutes, and the common law), the extent to which federal statutes might be understood to preempt state law, the circumstances in which courts defer to federal administrative agencies about the meaning of provisions that the agencies administer, and how the interpretation or application of a statute might change as the statute ages. The course is challenging for many reasons: it raises subtle issues, it requires close analysis of complicated laws, and it draws examples from a broad range of different substantive areas. It also tends to attract exceptionally strong students (including many who are preparing themselves for judicial clerkships).

Again, Tim was up to the challenge. As in Civil Procedure, I based my grades entirely on the final exam, and Tim comfortably earned another A–. His essays were thoughtful, well written, and well informed. They were also remarkably consistent. Across a range of different questions—some based on real-life questions of statutory interpretation, some broader or more theoretical—Tim's answers were apt and legally sophisticated.

As one would expect, Tim has succeeded not just in my classes but in law school as a whole. Indeed, with the exception of a single B+ in the first semester of his first year, he has earned an A or A– in every graded course that he has taken in law school. His cumulative grade-point average puts him comfortably in the top fifteen percent of his graduating class, and the trend is with him; his second-year grades were a significant notch above his first-year grades (which were already good).

If I can answer any questions about Tim or provide any further information, please do not hesitate to call me. I am currently working from home (434-244-0112), but I expect to return soon to the office (434-924-7372); please feel free to use either number.

Sincerely,

Caleb Nelson - cnelson@law.virginia.edu - (434) 924-7372

Caleb Nelson
Emerson G. Spies Distinguished Professor of Law
Caddell and Chapman Professor of Law
University of Virginia School of Law
580 Massie Rd.
Charlottesville, VA 22903
434-924-7372
434-924-7536 (fax)
cnelson@law.virginia.edu

Caleb Nelson - cnelson@law.virginia.edu - (434) 924-7372

LAW OFFICES
WILLIAMS & CONNOLLY LLP

725 TWELFTH STREET, N.W.

WASHINGTON, D. C. 20005-5901

(202) 434-5000

FAX (202) 434-5029

MARK LEVINSTEIN
(202) 434-5012
mlevinstein@wc.com

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

June 13, 2021

Honorable Federal Judge

Re: Recommendation in Support of Timothy Blauch's
(University of Virginia Law School) Clerkship Application

Dear Judge:

I am writing in support of the clerkship application of Timothy Blauch, who was a student this Spring in a seminar I co-taught at the University of Virginia Law School.

I am a partner at the law firm of Williams & Connolly, LLP, where I have worked since 1983, and have been a partner for the past thirty years. In addition, since 1985 I have been an adjunct professor, teaching antitrust law, advanced antitrust, and sports law at the law schools of Catholic University, George Washington University, George Mason University, Georgetown University, and for the past six years, the University of Virginia.

Based on those many years of experience, it is my view that Timothy Blauch is an excellent candidate to serve as a clerk to a federal judge. The course, which I co-teach with sports law and sports business legend Donald Dell, requires students to learn antitrust law, labor law, contract law, intellectual property law, and other legal subject matter, while applying those legal principles to the sports industry. Our class is a seminar and this Spring we only had thirteen students. The class is intended to be very practical, with students called upon to analyze the reported decisions, apply them to other fact patterns, and discuss how the application of legal principles developed in other business contexts have impacted and changed the development of the sports industry. Students find it very challenging, as they need to identify legal issues from a substantial array of legal subject matter, and apply what they have learned to address very practical, real word fact situations.

Tim was one of the best students in our class and is conscientious and trustworthy. Each week, he came to class fully prepared. It was obvious that his preparation was thorough – as he was able to question, answer, and argue in a fluent and logical way. He was someone we could count on to answer our questions when other students were not up to the task. He not only learned the material, but he was able to take the case law and the notes and questions that follow the cases and apply that knowledge to hypothetical issues and disputes not addressed in the casebook. His exam was the best in the class, and one of the best over the past several years. He

WILLIAMS & CONNOLLY LLP
Honorable Federal Judge
June 13, 2021
Page 2 of 2

is also very articulate and personable and likely to contribute to the collegiality of chambers. I believe Timothy will make an excellent clerk.

A very high percentage of the lawyers at our firm have clerked for federal judges at the district court, court of appeals, and/or Supreme Court level. Many of our lawyers have clerked for more than one federal judge (e.g., district court and court of appeals, court of appeals and Supreme Court). I, personally, had the great privilege to clerk for a legendary United States District Judge in the District of Massachusetts, the late Honorable W. Arthur Garrity, Jr., who ordered busing to integrate the Boston public schools, before I came to work at Williams & Connolly. I have worked with, for many years supervised, and have interviewed and hired young lawyers who have been judicial clerks.

Based on those many years of experience, it is my view that Timothy Blauch is an excellent candidate to serve as a clerk to a federal judge. His interests and knowledge will well-position him to work on a wide variety of cases. He has a background in accounting and the practical issues of how businesses work, and that was on display in our class, as he addressed issues that concerned how business in the sports industry changed their rules, organizational documents, and behavior in response to judicial decisions interpreting a broad array of legal subject matter.

Please do not hesitate to call should you have any questions about Tim. I would be more than happy to try to answer them.

Very Truly Yours,

/s/ *Mark S. Levinstein*

Mark S. Levinstein

MSL:tbs

Pretrial Motions Hearing – Motion for Summary Judgment
[Case Name Redacted for Confidentiality]

Issues:

- Whether the statute of limitations that applies to Plaintiff's non-fraud claims begin when injury occurred or when Plaintiff knew/should have known that injury had occurred
- Whether Plaintiff's non-fraud claims for negligence and breach of warranty are time-barred by the statute of limitations prescribed in Virginia state law
- Whether Plaintiff's fraud and breach of warranty claims are barred by the learned intermediary doctrine
- Whether Plaintiff's fraud claims should be dismissed due to lack of personal reliance on representations and statements made by Defendant

I.

[Facts and Procedural History Redacted for Confidentiality]

II.

Federal Rule of Civil Procedure 56(a) states that “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” In a motion for summary judgment, all facts in the case must be evaluated in the most favorable light for the nonmoving party. Moore v. Winebrenner, 927 F.2d 1312, 1313 (4th Cir. 1991). Even so, the nonmoving party still must “[offer] . . . concrete evidence from which a reasonable jury could return a verdict in [the nonmoving party’s] favor.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 243 (1986).

Virginia state law follows the principle of lex loci delicti, or the place where the wrong occurred, for personal injury claims arising from a tort. Jones v. R.S. Jones & Assoc., Inc., 246 Va. 3, 5, 431 S.E.2d 33, 34 (1993). Plaintiff received the [surgery] in Virginia. Therefore, the court must apply Virginia state law to her claim.

III.

The first issue that the court must address is whether Plaintiff's non-fraud claims are barred by Virginia's statute of limitations. Because the injury alleged is a personal injury, both the negligence

and breach of warranty claims in Plaintiff's complaint fall under Va. Code § 8.01-243 which states that "every action for personal injuries . . . shall be brought within two years after the cause of action accrues," and Va. Code. § 8.01-230, which states that "the right of action shall be deemed to accrue and the prescribed limitation period shall begin to run from the date the injury is sustained in the case of injury to the person." See Torkie-Tork v. Wyeth, 739 F.Supp.2d 887, 890 (E.D. Va. 2010) (finding that for "the non-fraud claims, the inquiry is guided by Va. Code § 8.01-230, which makes clear that . . . accrual occurs, and the statute of limitations begins to run, on the date the injury is sustained . . . and not when the resulting damage is discovered") (internal quotations omitted); Schmitt-Doss v. American Regent, Inc., No. 6:12-cv-00040, 2014 WL 3853184, at *4 (W.D. Va. Aug. 5, 2014) ("[t]he personal injury statute of limitations applies to Plaintiff's negligence, breach of implied warranty, and failure to warn claims alike.").

A. Plaintiff's non-fraud claims should be dismissed.

i. The statute of limitations began to run when injury actually occurred.

Plaintiff provides two arguments as to why the statute of limitations has not expired on these non-fraud claims, both of which are unavailing. Plaintiff first argues that she did not suffer actual injury from her surgery until 2013, when she sought medical treatment due to [painful symptoms]. [ECF citation redacted]. Plaintiff had previously sought treatment after the surgery for other symptoms, but she argues that she had suffered from similar conditions prior to the [surgery]. Therefore, Plaintiff's argument hinges on the idea that only her new symptoms would have started the running of the statute of limitations.

The Fourth Circuit, however, rejected a similar argument in Wade v. Danek Medical, Inc., 182 F.3d 281 (4th Cir. 1999). The plaintiff in that case had received an implanted medical device in 1992 that fused two of her vertebrae. Id. at 284. She continued to suffer from worsening back pain and reported this to her doctors by April of 1993. Id. The plaintiff eventually had the surgical implant

removed in April of 1995. Id. The plaintiff then sued the producer of the device in October of 1995. Id. The producer moved for summary judgment on the grounds that the plaintiff had failed to bring her suit within the two-year statute of limitations, and the district court granted the motion. Id. at 283.

On appeal, the plaintiff argued that the statute of limitations only began to run when she suffered new symptoms of pain and injury. Id. at 285. Since the plaintiff had been suffering from back pain before the implant, she contended that the worsening back pain felt after the surgery did not start the running of the statute of limitations. Id. Instead, the plaintiff argued that the statute of limitations began to run when she experienced new symptoms that had only arisen less than two years before she had filed her suit. Id.

The Fourth Circuit rejected this argument because it “[was] squarely foreclosed by Virginia law.” Id. According to Virginia law, “an injury is deemed to occur, and the statute of limitations period begins to run, whenever any injury, however slight, is caused by the negligent act, even though additional or more severe injury or damage may be subsequently sustained as a result of the negligent act.” Id. (internal quotations omitted); See also Kerns v. Wells Fargo Bank, N.A., 296 Va. 146, 155, 818 S.E.2d 779, 783 (2018) (“Under [§ 8.01-230], a right of action on a tort claim involving personal injury . . . accrues on the date the injury is sustained.”) (internal quotations omitted); Castillo v. Emergency Med. Assoc., P.A., 372 F.3d 643, 646 (4th Cir. 2004) (holding that a “right of action shall be deemed to accrue and the prescribed limitation period shall begin to run from the date the injury is sustained in the case of injury to the person.”) (internal quotations omitted). Since the plaintiff “had both experienced her symptoms and communicated them to her doctors well over two years before the action was filed,” the court believed it to be “logically impossible for her injury to have occurred” within the two years prior to when she filed her suit. Id.

Plaintiff faces a similar hurdle. She argues that the [surgery] caused numerous injuries [redacted]. [ECF citation redacted]. However, Plaintiff admits that she began seeing doctors for some

of these symptoms as early as 2009 or 2010. [ECF citation redacted]. As with the plaintiff in Wade, “it would have been logically impossible for her injury to have occurred less than two years before the action was filed.” 182 F.3d at 285. Accordingly, the court should follow the precedent laid out in Wade and find that Plaintiff’s non-fraud claims are barred by the statute of limitations because she began to express injury in 2009, yet only filed suit in 2014, well outside of the two-year requirement to bring her claim.

ii. The new statute does not apply to this case.

In addition, Plaintiff argues that VA Code § 8.01-249(9)¹ extended the statute of limitations for her claim. § 8.01-249(9) was passed by the Virginia state legislature in March of 2016. See 2016 Virginia Laws Ch. 353 (S.B. 90). Under the amended statute, the statute of limitations in products liability cases involving medical devices does not begin to run until the “[plaintiff] knew or should have known of the injury and its causal connection to the device.” Id. However, claims that were time-barred by a previous statute of limitations remain barred when “nothing in the amended statute suggests that it applies retroactively.” Michael v. Sentara Health System, 939 F.Supp. 1220, 1229 (E.D. Va. 1996); see also Parris v. Appalachian Power Co., 2 Va. App. 219, 229, 343 S.E.2d 455, 461 (Va. Ct. App. 1986) (finding that “an amendment to a period of limitation that enlarges the period is generally applicable to existing causes of action provided that an action already barred is not revived.”); Kesterson v. Hill, 101 Va. 739, 743, 45 S.E. 288, 289 (1903) (holding that “the right to set up the bar of a statute of limitations as a defense . . . after the statute has run is a vested right, and cannot be taken away by legislation, either by a repeal of the statute without saving clause, or by an affirmative act”).

¹ Va. Code 8.01-249(9) states that:

In products liability actions against parties other than health care providers as defined in § 8.01-581.1 for injury to the person resulting from or arising as a result of the implantation of any medical device, when the person knew or should have known of the injury and its causal connection to the device.

By 2016, the statute of limitations had already expired for Plaintiff to bring her non-fraud claims. Therefore, the amended statute provides no additional opportunity for Plaintiff to now bring her suit for negligence and breach of warranty. Her non-fraud claims remain time barred.

ii. If the new statute did apply, there is a genuine issue of material fact.

Both sides have also provided arguments in their briefs for whether Plaintiff would still be time-barred on the non-fraud claims should the court apply the statute of limitations found in § 8.01-249(9). For all the previously stated reasons, that statute does not apply in this case; however, if it did then summary judgment would be unwarranted because there is a genuine issue of material fact. The statute says specifically that “when the person knew or should have known of the injury *and its causal connection to the device.*” (emphasis added). This would mean that the statute of limitations would not begin to run until Plaintiff realized or should have realized that her injuries were being caused by [the device installed during surgery].

Plaintiff alleges that she did not know or have reason to know that the device was causing her pain and injuries from 2009-2010 because they were the same symptoms and issues that she had previously suffered from prior to the 2008 surgery. Since we are construing the facts in the light most favorable for Plaintiff, this consistency in symptoms both before and after surgery creates a question of notice and reasonableness that would be best left for the jury to decide.²

B. Plaintiff's fraud claims should be dismissed.

i. There is a genuine issue of fact on whether the learned intermediary doctrine applies to this case.

In addition, Defendant contends that both the fraud and breach of warranty claims should be dismissed under “[t]he learned intermediary doctrine, [which] provides an exception to the general

² Although it may be unlikely for a jury to rule in Plaintiff's favor, it is not impossible to imagine that a reasonable jury could conclude that Plaintiff believed the surgery had only failed to alleviate her symptoms and medical issues, and that she only had reason to know that [the device] was causing injury in 2013 when she says the pain [worsened].

rule imposing a duty on manufacturers to warn consumers about the risks of their products.” Talley v. Danek Medical, Inc., 179 F.3d 154, 162 (4th Cir. 1999). In cases that involve “products requiring prescription or application by physicians, the doctrine holds that a manufacturer need only warn doctors and not consumers.” Id. The plaintiff has the burden of proof in showing that the doctrine does not apply to her case and “must not only show that a manufacturer’s warning was inadequate, but that such inadequacy affected the prescribing physician’s use of the product and thereby injured the plaintiff.” Higgins v. Forest Lab., 48 F.Supp.3d 878, 884 (W.D. Va. 2014).

Defendant’s argument should be rejected. Construing all the facts in the light most favorable to Plaintiff, there appears to at least be some dispute over whether her physicians fully understood the risks involved with the [device]. [The surgeon] admits that she had little experience with [the device] prior to Plaintiff’s surgery. [ECF citation redacted]. She admits that she had a broad understanding of some of the risks involved with the [device]. [ECF citation redacted]. However, [the surgeon] also later stated that she either was not fully aware of certain of the risks involved with the device or could not remember when she learned that certain of these risks existed. See [ECF citation redacted] (stating that [the surgeon] could not recall when she first learned that the [device] could cause pain [redacted] and stating that she was unaware that [the device could cause post-procedure complications]).

Given [the surgeon’s] relative inexperience with the device at the time that she performed the surgery, it is not possible at this point in time to say that Plaintiff will be unable to show that an inadequate warning from Defendant “affected the prescribing physician’s use of the product and thereby injured the plaintiff.” Higgins, 48 F.Supp.3d at 884 (internal quotations omitted). Therefore, summary judgment is inappropriate on these claims under the learned intermediary doctrine.

ii. Plaintiff did not personally rely on any representations or statements from Defendant.

In addition to her non-fraud claims, Plaintiff also alleges that Defendant committed fraud, fraudulent concealment, and constructive fraud. Each of these counts require the plaintiff to prove

similar, yet separate, elements. To prove fraud, a plaintiff must prove that there was “(1) a false representation, (2) of a material fact, (3) made intentionally and knowingly, (4) with intent to mislead, (5) reliance by the party misled, and (6) resulting damage to the party misled.” Richmond Metro Auth. v. McDevitt Street Bovis, 256 Va. 553, 557-58, 507 S.E.2d 344, 346 (1998). The fraudulent act reaches the level of fraudulent concealment when the act “involves deliberate nondisclosure designed to prevent another from learning the truth.” Van Deusen v. Snead, 247 Va. 324, 328, 441 S.E.2d 207, 209 (1994). In contrast, constructive fraud does not require the act to be committed with an “intent to mislead, but [rather that it be] made innocently or negligently [and that it results] in damage to the one relying on it.” Evaluation Research Corp. v. Alequin, 247 Va. 143, 148, 439 S.E.2d 387, 390 (1994).

For all claims of fraud, the plaintiff faces a two-year statute of limitations from the time when the plaintiff knew or should have known that the fraud had occurred. See Va. Code § 8.01-249(1) (“The cause of action . . . shall be deemed to accrue . . . [i]n actions for fraud or mistake . . . when such fraud, mistake, misrepresentation, deception, or undue influence is discovered or by the exercise of due diligence reasonably should have been discovered.”). See also Torkie-Tork, 739 F.Supp.2d at 892 (rejecting defendant’s argument that Va. Code § 8.01-230 also applies to fraud claims resulting in personal injury because “§ 8.01–249 creates the rule for fraud claims, without any exceptions, and without reference to the nature of the injury alleged or the ‘gravamen’ or ‘object’ of the claims.”).

In Virginia, the plaintiff is required to show that she was the party who suffered damage by relying on the defendant’s fraudulent act. See Van Deusen, 247 Va. at 327 (“A party alleging fraud must prove . . . (1) a false representation . . . (5) reliance by the party misled, and (6) resulting damage to *him*.”) (emphasis added); See also Harter v. Defendant, No. 2:12-cv-00737, 2016 WL 7407425, at *4 (S.D. W. Va. Dec. 15, 2016) (“Virginia law requires proof of reliance by the injured party, as opposed to reliance by a third party, in order to maintain an action for fraud.”). Unfortunately for many plaintiffs, this means that “establishing the element of reliance by the injured party is problematic

under Virginia law in the drug and medical device context, where any alleged misrepresentations would typically be made to a prescribing doctor, or learned intermediary” and can result in the plaintiff having no legal remedy available to her. Robert E. Draim, *Va. Prac. Series Prods. Liab.* § 6:7.

Plaintiff states in her deposition that she did not rely on statements or representations from Defendant when she elected to have the procedure. [ECF citation redacted]. She instead relies on Torkie-Tork v. Wyeth, 739 F.Supp.2d 895 (E.D. Va. 2010) to support her contention that she can maintain her fraud claims due to her doctor’s reliance on Defendant’s assertions about its product. [ECF citation redacted]. That case involved a therapeutic drug that the plaintiff had taken before later being diagnosed with breast cancer. Torkie-Tork, 739 F.Supp.2d at 897. The plaintiff alleged that the defendant producing the drug had committed negligence and fraud with its product label. Id. at 896. In its decision partially denying the defendant’s motion for summary judgment, the court stated that fraud could have occurred if the defendant “concealed a fact that is material to the transaction, knowing that the [plaintiff or her doctors are] acting on the assumption that no such fact exists.” Id. at 902. (internal quotations omitted).

Although the language from the court in Torkie-Tork appears to provide strong support to Plaintiff, this case is an exception to the overwhelming majority of opinions that have consistently required the plaintiff herself to have personally relied on some representation from the defendant being sued. Given that this language has not been cited elsewhere in the ten years since this opinion was written,³ this court should continue to apply the traditional rule that has been followed by other courts when analyzing the required elements for fraud under Virginia law. See Saparoff v. Old Waterloo Equine Clinic, Inc., No. 11-1864, 2012 WL 503849, at *1 (4th Cir. Feb. 16, 2012) (per

³ In fact, the opposite has occurred: in Micjan v. Wal-Mart Stores, Inc., No. 14-855, 2016 WL 7212579, at *14 (W.D. Pa. Dec. 13, 2016), the Western District of Pennsylvania cited to some of the language found in Torkie-Tork when explaining the requirements under Virginia law to prove fraud. The court, however, then applied the traditional rule and dismissed the plaintiff’s fraud claims due to a lack of personal reliance on the defendant’s representations by the plaintiff. Id. at *8.

curiam) (holding that “[t]o establish her claim of fraud under Virginia law, [plaintiff] was required to establish . . . (2) she relied on the misrepresentation”); John C. Holland Enter., Inc. v. J. P. Mascaro & Sons, Inc., 829 F.2d 1120 (4th Cir. 1987) (unpublished table decision) (holding that dismissal under Fed. R. Civ. Pro. 12(b)(6) was proper when “[plaintiff] has not relied on [defendant’s] representation” because “with respect to the fraud claim, one aspect which must be established to exist for the plaintiff to succeed is reliance by the party misled”); Hunter v. Holsinger, No. 5:15-cv-00043, 2016 WL 1169308, at *12 (W.D. Va. Feb. 19, 2016) (concluding that “[f]undamentally . . . a fraud claim requires that the party asserting the claim be the party to whom false representations were made”) (internal quotations omitted).

As mentioned previously, Plaintiff has already conceded in her deposition that she did not personally rely on the representations asserted by Defendant. She therefore will be unable to prove the necessary link between her own reliance on the allegedly fraudulent acts and the damages that she suffered in order to win her fraud claims at trial. Accordingly, these claims should be dismissed.

IV.

Plaintiff’s non-fraud claims are time barred under Va. Code § 8.01-230. The statute of limitations began to run when Plaintiff actually suffered injury, and her own statements show that she began seeing doctors for some of these symptoms in 2009 and 2010. Moreover, Plaintiff cannot prove her fraud claims at trial because she has admitted in her deposition that she did not personally rely on any representation from Defendant. Without this reliance, she will lose these claims. Therefore, summary judgment is warranted in this case should the parties not reach a settlement prior to the hearing and ruling on this motion.

Applicant Details

First Name	Samantha
Last Name	Blount
Citizenship Status	U. S. Citizen
Email Address	sblount@uoregon.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>1585 Ferry Alley, Apt. 2</div> <div>City</div> <div>Eugene</div> <div>State/Territory</div> <div>Oregon</div> <div>Zip</div> <div>97401</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	912-506-4893

Applicant Education

BA/BS From	Georgia State University
Date of BA/BS	December 2018
JD/LLB From	University of Oregon School of Law
	http://www.law.uoregon.edu/
Date of JD/LLB	May 21, 2022
Class Rank	30%
Law Review/Journal	Yes
Journal(s)	Journal of Environmental Law and Litigation
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	Yes
--------------------------------------	-----

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

References

Professor Mary Wood, 541-953-5161, mwood@uoregon.edu;
Mat dos Santos,
971-227-8910, mat.dossantos@ourchildrenstrust.org;
Malia Losordo,
919-412-4645, malia.losordo@gmail.com

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Samantha Blount

Phone: (912) 506-4893 • Email: sblount@uoregon.edu

May 13, 2022

The Honorable Judge Elizabeth W. Hanes
Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes:

I am a third-year law student at the University of Oregon School of Law, and I am writing to apply for a term clerkship position in your chambers beginning in August 2022. I am highly motivated and detail-oriented, and I believe that I would make a strong addition to your chambers.

Upon graduation, my goal is to complete a clerkship to continue learning and developing my writing and advocacy skills. Ultimately, I am an aspiring environmental attorney with a particular interest in protecting the rights of children and vulnerable populations. The breadth of my work experience reflects my commitment to public service and has provided me with extensive research and writing experience on a broad range of topics. While I have significant experience with cases pertaining to federal environmental laws, through my work with the Honorable Ann Aiken and Our Children's Trust, I have gained experience working on complicated constitutional law cases and other cases arising under federal law.

In addition to my work experience, I have developed considerable legal research, writing, and editing skills that emphasize clarity, conciseness, and accuracy. At UO Law, I have served as the Editor-in-Chief of the *Journal of Environmental Law and Litigation*. In this capacity, I have worked with published authors and other law students on academic articles. Finally, while in law school, my writing has been recognized for its originality and analytical reasoning. My research project won an Excellence in Legal Writing award, and it will be published in the *Journal of Environmental Law and Litigation* next year.

My resume, transcript, writing sample, and references have been submitted with this application. Thank you in advance for your consideration. I look forward to hearing from you.

Respectfully,



Samantha Blount

Samantha Blount

Phone: (912) 506-4893 • Email: sbount@uoregon.edu

Education

University of Oregon School of Law
Juris Doctorate candidate
 GPA: 3.4

Eugene, OR
Expected May 2022

Georgia State University
Bachelor of Arts in History, Minor in Political Science
Summa cum laude, GPA: 4.1 (graduated in 3 years)
 Honors: *GSU Presidents List* (Fall 2015, Spring/Fall 2016, Spring/Fall 2017, Spring/Summer 2018)

Atlanta, GA
August 2015 — December 2018

Activities & Leadership

- Editor-in-Chief, *Journal of Environmental Law and Litigation* 2021–2022
 - Staff Editor, *Journal of Environmental Law and Litigation* 2020–2021

Experience

Our Children's Trust
Law Clerk

Eugene, OR
January 2022 – Present

- Conducts legal research and writes legal memoranda for both state and federal cases asserting the constitutional right of youth plaintiffs
 - Conducts legal research and writes legal memoranda on state and federal constitutional law, civil procedure, environmental law and policy, and various state fossil fuel permitting laws

UO's Environmental & Natural Res. Ctr: Oceans, Coasts, and Watersheds Project
Bowerman Research Fellow

Eugene, OR
August 2021 - Present

- Research FERC regulations regarding dam licensing and de-commissioning to make recommendations on how to update the dam removal regulations
 - Research how water is used for food, water, and energy systems on the Willamette River and how state in-stream flow laws affect water use on the river

United States District Court for the District of Oregon
Judicial Extern for the Honorable Ann Aiken

Eugene, OR
August 2021 – December 2021

- Conducted legal research, reviewed motions and filings, wrote legal memorandum analyzing issues before the court, drafted opinions on assigned cases
 - Attended in-person and remote proceedings, including status conferences, change of plea hearings, sentencings, and oral arguments
 - Worked on a variety of cases pertaining to Title IV, First Amendment Freedom of Religion rights, Social Security Disability appeals, and NEPA

Center for Animal Law Studies
Legal Research Assistant

Eugene, OR
May 2021 – August 2021

- Conducted legal and policy research regarding marine protections for aquatic animal species, including an analysis of the 30x30 marine protection campaign and wild fish protections under U.S. law

Western Environmental Law Center, Environmental Law Clinic
Student Volunteer

Eugene, OR
January 2021– May 2021

- Conducted legal research and drafted legal documents for prospective cases under the supervision of an attorney at the Western Environmental Law Center
 - Researched cases arising under the Endangered Species Act, the National Environmental Policy Act, and the Administrative Procedure Act

University of Oregon Law, Professor Mary Wood

Eugene, OR

Research Assistant

June 2020 – August 2021

- Meticulously researched, wrote, and edited assigned projects from supervisor, including a legal Public Trust Doctrine casebook and Public Trust Doctrine treatise
- Analyzed Public Trust case law and scholarship and verified the accuracy of their use

Publications

Fracked Regulations: How Regulatory Exemptions for Fracking Harms Tribal Waters, 38 J. ENV'T L. & LITIGATION (forthcoming 2023).

Awards

- 2021 Chapin Clark Award for Editorial Excellence, *Journal of Environmental Law and Litigation*
- 2021 Excellence in Legal Writing Award: *Fracked Regulation: How Regulatory Exemptions for Fracking Harms Tribal Waters*
- Oregon Law Merit Scholarship Recipient

Certifications

LexisNexis Proficiency Certification

September 2021

Georgia State University**Office of the Registrar - Transcripts**

P.O. Box 4017
 Atlanta, Ga. 30302
 Phone: 404-413-2900
<http://www.gsu.edu/registrar/>

To: Samantha Blount
 samanthabtm@gmail.com

Re: Transcript of Samantha Blount
 samantha_blount@outlook.com

Request Number:

It is not permissible to replicate this transcript or forward it to any person or organization other than the identified recipient.

Georgia State University Official Transcript Statement of Authenticity

This official transcript has been transmitted electronically to the recipient, and is intended solely for use by that recipient. If you are not the intended recipient, please notify the Office of the Registrar at Georgia State University. It is not permissible to replicate this document or forward it to any person or organization other than the identified recipient. Release of this record or disclosure of its contents to any third party without written consent of the record owner is prohibited.

This official transcript has been digitally signed and therefore contains special characteristics. If this document has been issued by Georgia State University, and for optimal results, we recommend that this document is viewed with the latest version of Adobe® Acrobat or [Adobe® Reader](#); it will reveal a digital certificate that has been applied to the transcript. This digital certificate will appear in a pop-up screen or status bar on the document, display a blue ribbon, and declare that the document was certified by Georgia State University with a valid certificate issued by GeoTrust CA for Adobe®. This document certification can be validated by clicking on the Signature Properties of the document.



The blue ribbon symbol is your assurance that the digital certificate is valid, the document is authentic, and the contents of the transcript have not been altered.



If the transcript does not display a valid certification and signature message, reject this transcript immediately. An invalid digital certificate display means either the digital signature is not authentic, or the document has been altered. The digital signature can also be revoked by the transcript office if there is cause, and digital signatures can expire. A document with an invalid digital signature display should be rejected.



Lastly, one other possible message, Author Unknown, can have two possible meanings: The certificate is a self-signed certificate or has been issued by an unknown or untrusted certificate authority and therefore has not been trusted, or the revocation check could not complete. If you receive this message make sure you are properly connected to the internet. If you have a connection and you still cannot validate the digital certificate on-line, reject this document.

The transcript key is the last page of this document.

The current version of Adobe® Reader is free of charge, and available for immediate download at <http://www.adobe.com>.

If you require further information regarding the authenticity of this transcript, you may call the Enrollment Services Center at Georgia State University at 404-413-2900.

GEORGIA STATE UNIVERSITY

GEORGIA STATE UNIVERSITY

A UNIT OF THE UNIVERSITY SYSTEM OF GEORGIA

OFFICE OF THE REGISTRAR • P.O. BOX 4017 • ATLANTA, GEORGIA 30302-4017

OFFICIAL TRANSCRIPT

Student No: 002-18-2914 Date of Birth: 06-DEC-XXXX Date Issued: 10-FEB-2020
Page: 1

Issued To: SAMANTHA BLOUNT
AVOW:26989955
CERTIFIED ELECTRONIC PDF

Record of: Samantha M. Blount
*** WARNING ***
--No Address--

Student Type: New 1st Professional student
Admit: Fall Semester 2015
Last Admit: Fall Semester 2019

Current Program
Program : LWJD

Comments:
Awarded GPA: 4.1 ASAB_HIS Dec 21, 2018

Degrees Awarded Bachelor of Arts 21-DEC-2018
Primary Degree

Program : AB HISTORY
Minor : Political Science
Concentration : Pre-Law
Dept. Honors: Distinction in Major
Inst. Honors: Summa Cum Laude

US/H: S US/C: S GA/H: S GA/C: S

RTPW: Passed RTPR: Passed

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
----------	--------------	----------	-------

TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:

FA2014 College of Coastal Georgia
Ehrs: 18.00 GPA-Hrs: 18.00 Pts: 69.00 GPA: 3.83

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
----------	--------------	----------	-------

Transfer Information continued:

SU2015 Advanced Placement Credit
Ehrs: 10.00 GPA-Hrs: 0.00 Pts: 0.00 GPA: 0.00

INSTITUTION CREDIT:

Fall Semester 2015

College of Arts & Sciences
New Freshman

BIOL 1103K	INTRODUCTORY BIOLOGY I	4.00 A+	17.20
FREN 1002	ELEMENTARY FRENCH II	3.00 A	12.00
POLS 1101	AMERICAN GOVERNMENT	3.00 A+	12.90
POLS 2401	GLOBAL ISSUES	3.00 A	12.00
SOCI 1101	INTRODUCTION TO SOCIOLOGY	3.00 A	12.00
Term: Ehrs: 16.00 GPA-Hrs: 16.00 Pts: 66.10 GPA: 4.13			
President's List		Good Standing	

Spring Semester 2016

College of Arts & Sciences
Continuing or Returning

GEOG 1101	INTRO TO HUMAN GEOGRAPHY	3.00 A+	12.90
HIST 1112	SUR OF WORLD HIST SINCE 1500	3.00 A+	12.90
PERS 2001	PERSPECTIV:COMPARATIVE CULTURE	2.00 A+	8.60
RELS 2001	INTRO TO WORLD RELIGIONS	3.00 A	12.00
WGSS 2010	INTRO WOMEN'S/GENDER/SEXUALITY	3.00 A+	12.90
Term: Ehrs: 14.00 GPA-Hrs: 14.00 Pts: 59.30 GPA: 4.24			
President's List		Good Standing	

***** CONTINUED ON NEXT COLUMN ***** CONTINUED ON PAGE 2 *****

AN OFFICIAL SIGNATURE IS WHITE WITH A BLUE BACKGROUND

REJECT DOCUMENT IF SIGNATURE BELOW IS DISTORTED

In accordance with the Family Educational Rights and Privacy Act of 1974, as amended, this document may not be released to others without the written consent of the student..

Tarah Nicole Mirus, Registrar

THE NAME OF THE UNIVERSITY APPEARS IN WHITE ACROSS THE FACE OF THIS 8 1/2 X 11 DOCUMENT

GEORGIA STATE UNIVERSITY

GEORGIA STATE UNIVERSITY

A UNIT OF THE UNIVERSITY SYSTEM OF GEORGIA

OFFICE OF THE REGISTRAR • P.O. BOX 4017 • ATLANTA, GEORGIA 30302-4017

OFFICIAL TRANSCRIPT

Student No: 002-18-2914 Date of Birth: 06-DEC-XXXX

Date Issued: 10-FEB-2020

Record of: Samantha Marie Blount

Page: 2

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R	SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
----------	--------------	----------	-------	----------	--------------	----------	-------

Institution Information continued:

Institution Information continued:

Fall Semester 2016

College of Arts & Sciences

Continuing or Returning

AH 1750	SURVEY OF ART II	3.00 A	12.00
FREN 2001	INTERMEDIATE FRENCH I	3.00 A+	12.90
HIST 1111	SURVEY OF WORLD HIST TO 1500	3.00 A+	12.90
HIST 3000	INTRO TO HIST STUDIES-CTW	4.00 A	16.00
POLS 3145	INTRO TO AMERICAN LAW	3.00 A	12.00

Term: Ehrs: 16.00 GPA-Hrs: 16.00 Pts: 65.80 GPA: 4.11

President's List

Good Standing

Fall Semester 2017

College of Arts & Sciences

Continuing or Returning

AH 1700	SURVEY OF ART I	3.00 A+	12.90
FREN 3013	INTENSIVE GRAMMAR REVIEW	3.00 A	12.00
FREN 3033	INTR/ANALYSIS OF LIT TXTS-CTW	3.00 A-	11.10
HIST 3530	EUROPE SINCE 1789	4.00 A	16.00
HIST 4550	BRITAIN & THE WORLD SINCE 1700	4.00 A	16.00

Term: Ehrs: 17.00 GPA-Hrs: 17.00 Pts: 68.00 GPA: 4.00

President's List

Good Standing

Spring Semester 2017

College of Arts & Sciences

Continuing or Returning

FREN 2002	INTERMEDIATE FRENCH II	3.00 A+	12.90
HIST 3625	WAR IN EUR & AMER SINCE 1500	4.00 A	16.00
HIST 4230	FOREIGN RELATIONS OF US	4.00 A	16.00
POLS 3140	JUDICIAL PROCESS & COURTS	3.00 A+	12.90
POLS 4130	AMERICAN CONSTITUTIONAL LAW	3.00 A+	12.90

Term: Ehrs: 17.00 GPA-Hrs: 17.00 Pts: 70.70 GPA: 4.16

President's List

Good Standing

Spring Semester 2018

College of Arts & Sciences

Continuing or Returning

HIST 3660	20TH CENTURY WORLD HISTORY	4.00 A-	14.80
HIST 3730	LATIN AMERICA SINCE 1810	4.00 A	16.00
HIST 4460	BILLS OF RIGHTS	4.00 A	16.00
HIST 4990	HISTORICAL RESEARCH-CTW	4.00 A	16.00

Term: Ehrs: 16.00 GPA-Hrs: 16.00 Pts: 62.80 GPA: 3.93

Dean's List

Good Standing

Summer Semester 2017

College of Arts & Sciences

Continuing or Returning

HIST 4975	STUDY ABROAD	4.00 A	16.00
-----------	--------------	--------	-------

Term: Ehrs: 4.00 GPA-Hrs: 4.00 Pts: 16.00 GPA: 4.00

President's List

Good Standing

Summer Semester 2018

College of Arts & Sciences

Continuing or Returning

POLS 3200	COMPARATIVE POLITICS	3.00 A+	12.90
POLS 3400	INTERNATIONAL POLITICS	3.00 A+	12.90

Term: Ehrs: 6.00 GPA-Hrs: 6.00 Pts: 25.80 GPA: 4.30

President's List

Good Standing

***** CONTINUED ON NEXT COLUMN ***** ***** CONTINUED ON PAGE 3 *****

AN OFFICIAL SIGNATURE IS WHITE WITH A BLUE BACKGROUND

REJECT DOCUMENT IF SIGNATURE BELOW IS DISTORTED

In accordance with the Family Educational Rights and Privacy Act of 1974, as amended, this document may not be released to others without the written consent of the student..

Tarah Nicole Mirus, Registrar

THE NAME OF THE UNIVERSITY APPEARS IN WHITE ACROSS THE FACE OF THIS 8 1/2 X 11 DOCUMENT

GEORGIA STATE UNIVERSITY

GEORGIA STATE UNIVERSITY

A UNIT OF THE UNIVERSITY SYSTEM OF GEORGIA

OFFICE OF THE REGISTRAR • P.O. BOX 4017 • ATLANTA, GEORGIA 30302-4017

OFFICIAL TRANSCRIPT

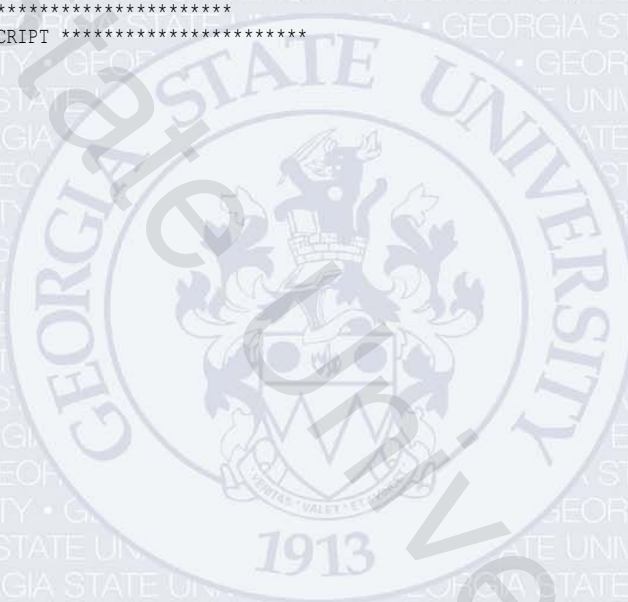
Student No: 002-18-2914 Date of Birth: 06-DEC-XXXX Date Issued: 10-FEB-2020

Record of: Samantha Marie Blount

Page: 3

Institution Information continued:

***** BEGIN	UNDERGRADUATE SEMESTER		TOTALS *****	
	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	106.00	106.00	434.50	4.10
TOTAL TRANSFER	28.00	18.00	69.00	3.83
OVERALL	134.00	124.00	503.50	4.06
***** END	UNDERGRADUATE SEMESTER		TOTALS *****	
***** END *****				
***** END OF TRANSCRIPT *****				



AN OFFICIAL SIGNATURE IS WHITE WITH A BLUE BACKGROUND

REJECT DOCUMENT IF SIGNATURE BELOW IS DISTORTED

In accordance with the Family Educational Rights and Privacy Act of 1974, as amended, this document may not be released to others without the written consent of the student..

Tarrah Nicole Mirus, Registrar

THE NAME OF THE UNIVERSITY APPEARS IN WHITE ACROSS THE FACE OF THIS 8 1/2 X 11 DOCUMENT

TRANSCRIPT SUPPLEMENTARY INFORMATION GEORGIA STATE UNIVERSITY

January 2016, the Board of Regents of the University System of Georgia approved the consolidation of Georgia State University and Georgia Perimeter College to become Georgia State University. Georgia State University is accredited by the Southern Association of Colleges and Schools Commission on Colleges to award doctorate, master, bachelor and associate level degrees. Contact the Commission on Colleges at 1866 Southern Lane, Decatur, Georgia 30033-4097 or call 404-679-4500 for questions about the accreditation of Georgia State University.

GRADING SYSTEM

GRADE	POINT VALUE	DEFINITION
A+	4.30	EXCELLENT
A	4.00	EXCELLENT
A-	3.70	EXCELLENT
B+	3.30	GOOD
B	3.00	GOOD
B-	2.70	GOOD
C+	2.30	SATISFACTORY
C	2.00	SATISFACTORY
C-	1.70	SATISFACTORY
D	1.00	PASSING
F	0.00	FAILURE
WF	0.00	WITHDREW FAILING
W	N/A	WITHDREW, NO PENALTY
WM	N/A	WITHDREW NO PENALTY, MILITARY
PW	N/A	PENDING WITHDRAWAL
I	N/A	INCOMPLETE
IP	N/A	IN PROGRESS
S	N/A	SATISFACTORY
U	N/A	UNSATISFACTORY
V	N/A	AUDIT
K	N/A	CREDIT BY EXAMINATION
NR	N/A	NOT REPORTED
GP	N/A	GRADE PENDING
GH	N/A	REINSTATEMENT GRADE PENDING

Associate and Graduate level do not use +/- grading.

Prior to 1970, Georgia State University used a different grading system.

A+	4.5	EXCELLENT
B+	3.5	GOOD
C+	2.5	SATISFACTORY
D+	1.5	PASSING

COURSE TITLES MAY INCLUDE SPECIAL CODES AS BELOW:

T	DENOTES COURSE WITH SPECIAL TOPIC
HON	DENOTES HONORS COURSE

Prior to Fall 2016, the following applied for Associate Level at Georgia Perimeter College:
All repeated courses appeared on the transcript and all grades were calculated in the GPA. In the (R) repeat columns an "A" indicated a repeated course and an "T" indicated the final attempt.

\$	Transfer Credit
%	Learning Support Course
~	Institutional Credit Only
WR	Developmental Courses
NG	No Grade
R	Repeat (Learning Support only 1964-1986)
CO	Complete (Continuing Education)
IN	Incomplete (Continuing Education)

Symbols are used to denote how certain courses may be used in determining cumulative grade point average:

@	This symbol denotes this grade was assigned as a result of academic dishonesty.
#	This symbol denotes this undergraduate student has been granted academic renewal and this grade is not used to calculate the institutional GPA.
^R	This symbol denotes this course is a repeated course, and this grade is not calculated in the institutional GPA.
%	This symbol denotes this course is not used in calculating the institutional cumulative

Do not permit any third party access to this document without written consent of student. (20 U.S.C. 1232)

Do not return the official transcript to the student under any circumstances. Either destroy it or return it to Georgia State University.

Honorable dismissal unless otherwise stated.

For additional information, contact: Office of the Registrar, Georgia State University, P.O. Box 4017, Atlanta, GA, 30302-4017

<http://registrar.gsu.edu/academic-records/> Telephone: (404) 413-2900 FAX: (404) 413-2220

GRADE POINT AVERAGE

Only grades of A+, A, A-, B+, B, B-, C+, C, C-, D, F and WF are considered in grade point average (GPA) calculations. The GPA is computed by dividing quality points by the number of credit hours scheduled in which a final grade of A+, A, A-, B+, B, B-, C+, C, C-, D, F and WF has been recorded. Quality points are calculated by multiplying the credit hours for each course by the point value of the grade earned. Credit by examination, credits which carry "S" or "U" grades, institutional credit courses, and courses specifically excluded by university policy (% grades) are not used in computing the cumulative grade point average.

TRANSFER CREDIT:

Courses transferred from another institution are not recorded individually, but are summarized by institution with totals.

OTHER INFORMATION:

Five quarter hours equal 3 1/2 semester hours or one course credit. A quarter is approximately 11 weeks. A semester is approximately 15 weeks.

Undergraduate courses are not included in summary data for graduate students, and graduate courses are not included in the undergraduate summary data.

Courses are reflected on the transcript by the levels of UQ (Undergraduate Associate Quarter), UA (Undergraduate Associate Semester), UG (Undergraduate Quarter), US (Undergraduate Semester), GR (Graduate Quarter), GS (Graduate Semester), LQ (Law Quarter), and LW (Law Semester).

Effective Summer term, 1988, the College of Law converted to a semester system. Effective Fall term, 1998, Georgia State University converted to a semester system. From 1970 through August 2009, Georgia State University utilized a grading system based on a 4.0 scale. Effective Fall 2009, Georgia State University began using plus and minus grades for the current grading system based on a 4.3 scale.

Consult the appropriate catalog for information regarding grading and symbols. Questions may be directed to the Office of the Registrar at 404-413-2900.

Georgia Perimeter College Grading System 1964-1976

Grades	Quality Points	Grades	Quality Points
A+	4.5	C	2.0
A	4.0	D+	1.5
B+	3.5	D	1.0
B	3.0	F	0.0
C+	2.5		

Georgia Perimeter was formerly under the following names, 1964-Dekalb College, 1972-Dekalb Community College, 1986-Dekalb College, 1998-Georgia Perimeter College (July 1, 1998).

COURSES ARE NUMBERED ACCORDING TO THE TABLE BELOW:

QUARTER	SEMESTER	
001-099	0001-0999	PRE-FRESHMAN
100-199	1000-1999	FRESHMAN
200-299	2000-2999	SOPHOMORE
300-399	3000-3999	JUNIOR
400-499	4000-4999	SENIOR
500-599	5000-5999	POST-BACCALAUREATE/PROFESSIONAL
600-999	6000-9999	GRADUATE LEVEL

#	This symbol denotes this course was used to fulfill a college preparatory curriculum deficiency. Although the grades for courses which satisfy college preparatory curriculum deficiencies are included in the grade point averages, these courses do not satisfy core curriculum or degree requirements.
-W	This symbol denotes this course was administratively withdrawn due to lack of attendance. The grade is not calculated in attempted hours.

Samantha Blount

Phone: (912) 506-4893 • Email: sblount@uoregon.edu

Writing Sample Cover Page

This writing sample is a portion of a bench memo I wrote during my externship with the Honorable Ann Aiken. It contains an analysis of two of the Defendants' five objections to a Findings and Recommendation of a magistrate court judge. The issue in this case involved a timber sale project authorized by the Bureau of Land Management. Plaintiffs claimed that BLM violated their NEPA obligations by not adequately address the potential impacts on two species. This opinion has not been published, so I have omitted the specific name of the project at issue and changed the name of the species to remain anonymous (the Marbled Murrelet is not at issue). I have taken the name of the magistrate court judge's name out of the memo. I have also left out the plaintiff's name and the defendant-intervenor's name. I have received permission to submit this as a writing sample, and it reflects only my writing and editing.

I. Standard of Review

This F&R is before Judge Aiken pursuant to 28 U.S.C. § 636(b)(1). When a party objects to the findings and recommendations of a magistrate court judge, the district court “make[s] a de novo determination of those portions of the . . . findings and recommendations to which the objection is made.” 28 U.S.C. § 636(b)(1), *see also* Federal Rules of Civil Procedure 72(b)(3). Upon review of the objections, the district court can “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*

Challenges to an agency’s NEPA decisions are reviewed under the Administrative Procedure Act (“APA”). *City of Sausalito v. O’Neil*, 386 F.3d 1186, 1205 (9th Cir. 2004). Under the APA, agency decisions may be set aside only if the decision is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” 5 U.S.C. § 706(2)(A). Agency actions are considered arbitrary and capricious when “the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

II. Discussion

Ultimately, the F&R’s analysis and conclusion are correct, and the court should adopt the magistrate court judge’s findings and recommendations in this case. Under NEPA, BLM is required to adequately disclose the environmental effects of its actions. *Or. Natural Desert Ass’n*

v. Bureau of Land Mgmt., 625 F.3d 1092, 1100 (9th Cir. 2010). As the F&R concludes, BLM failed to adequately analyze the effects of the timber sale on the Marbled Murrelet.

Defendants argue that multiple erroneous factual and legal statements in the F&R render the magistrate court judge's conclusions on BLM's NEPA disclosures incorrect. Broadly, Defendants argue in their objections to the F&R that (1) contrary to the F&R's determination, BLM took a "hard look" at the Project's impacts on the Marbled Murrelet, and (2) the F&R's analysis on NEPA tiering is erroneous. Each objection is addressed in turn below.

a. *BLM did not take a "hard look" at the Project's impacts on the Marbled Murrelet.*

Defendants also object to the F&R's finding that neither the REA nor the 2016 FEIS contained a site-specific analysis of the Project's effects on the Marbled Murrelet. F&R at 10. Defendants argue that contrary to the F&R's finding, BLM took a "hard look" at the Project's potential impacts on the Marbled Murrelet. BLM at 16; Def.-Int. at 17. NEPA's procedural requirements demand that agencies take a "hard look" at the environmental consequences of its actions. *Earth Island Institute v. U.S. Forest Service*, 351 F.3d 1291, 1300 (9th Cir. 2003). A "hard look" involves "genuinely scrutinizing the environmental consequences of a proposed action." *Ctr. for Env't Law and Policy v. U.S. Bureau of Reclamation*, 655 F.3d 1000, 1003 (9th Cir. 2011). "General statements about possible effects and some risks do not constitute a hard look absent a justification regarding why more definitive information could not be provided." *Id.* at 1007 (citing *Kern v. BLM*, 284 F.3d 1062, 1075 (9th Cir. 2011)).

Defendants point out two main reasons why BLM took a "hard look" at the Project's impacts and why the F&R's determination on BLM's NEPA disclosures is incorrect. First, they argue that the REA discussed an alternative to avoid timber harvest in areas that were deferred

from prior harvests to protect individual Marbled Murrelets under the former Survey and Manage framework. BLM at 15-16; Def.-Int. at 18. Second, BLM argues that it informed the public as to why the effects to the Marbled Murrelet were not analyzed in detail in the appendices and responses to comments section of the REA. BLM at 16. The F&R discusses the REA and FEIS at length, and the magistrate judge found that neither contain a site-specific analysis of the Project's effects to the Marbled Murrelet. F&R at 10. Upon review of the REA, 2016 FEIS, and the RMP, the magistrate judge correctly characterized the lack of analysis of the Marbled Murrelet in the record.

The F&R found that the REA does not adequately discuss the Project's effects on the Marbled Murrelet within the Project area. F&R at 7. Defendants argue that BLM analyzed an alternative to avoid timber harvests in areas previously identified as containing Marbled Murrelet sites in the REA. BLM at 15; Def.-Int. at 20. In section 2.6 of the REA, "Alternatives and Actions Considered but Not Analyzed in Further Detail," BLM briefly explains why it chose not to analyze an alternative that would avoid heavy thinning or regeneration harvest in units that were previously deferred from harvest to protect Marbled Murrelet sites. REA at 57. The REA states that this alternative was not analyzed in detail because the 2016 RMP allocated a "Late-Successional Reserve network," which accomplishes the goal of protecting older and structurally-complex forests, and the 2016 RMP provides management for species formerly protected as Survey and Manage species. *Id.* This brief explanation as to why BLM chose not to analyze this alternative in detail does not constitute a "hard look" for the purposes of NEPA review. In this portion of the REA, BLM does not scrutinize the environmental effects that the Project has on the Marbled Murrelet.

Defendant's also point to the REA's appendices and response to comments to demonstrate that BLM took a "hard look" at the Project's effect on Marbled Murrelets. BLM at 16. Appendix B of the REA states that a project alternative would not be considered because the 2016 RMP allocates a reserve network that will protect Marbled Murrelet. REA at B-4. Again, this does not constitute an effects analysis because BLM is not genuinely scrutinizing the Project's effects on the Marbled Murrelet. The reserve network is located outside the Project area. *Id.* A "hard look" under NEPA considers environmental effects within the Project area. Simply stating that the RMP provides protections for Marbled Murrelets in areas outside the Project area is not scrutinizing how the Project will affect the species.

I recommend that the opinion adopt the F&R's determinations.

b. *The F&R's analysis on NEPA tiering is not erroneous.*

Defendants further argue that the F&R's analysis on NEPA tiering is erroneous. In their briefing, Defendants argue that BLM complied with NEPA by referring to the RMP and the 2016 FEIS in Appendix C of the REA. However, as Ninth Circuit case law demonstrates, tying to a programmatic EIS does not obviate the need to conduct site-specific analysis of a project's environmental effects in the project area.

NEPA regulations permit tiering a site-specific environmental analysis to a broader programmatic environmental impact statement. 40 C.F.R. § 1508.28 states:

Tiering refers to the coverage of general matters in broader environmental impact statements ... with subsequent narrower statements or environmental analyses ... incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.

'Illio'ulaokalani Coal v. Rumsfeld explains NEPA tiering further, stating:

Following the programmatic stage is the "implementation stage during which individual site-specific projects, consistent with the forest plan, are proposed and assessed." A programmatic EIS must provide "sufficient detail to foster informed decision-making,"

but an agency need not fully evaluate site-specific impacts “until a critical decision has been made to act on site development.”

464 F.3d 1083, 1094 (9th Cir. 2006) (citing *Friends of Yosemite Valley v. Norton*, 348 F.3d 789, 800 (9th Cir. 2003)). The FEIS for Resource Management Plans developed under FLMPA that govern the land managed by BLM is an example of a programmatic environmental impact statement. 43 U.S.C. § 1712. The REA is a “narrower statement[.]” that incorporates the general discussions of the 2016 FEIS by reference. 40 C.F.R. § 1508.28

Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt. provides an example of when an EA has been improperly tiered to a programmatic EIS. 387 F.3d 989, 993 (9th Cir. 2004). In this case, plaintiffs challenged BLM’s environmental assessment (“EA”) for two timber sale projects in southwest Oregon for inadequately analyzing the cumulative environmental impacts of the projects. *Id.* at 993. BLM argued that the EA tiered to an EIS prepared for a Resource Management Plan, which encompassed the timber sale project lands. *Id.* at 997. The RMP in this case generally discussed the cumulative effects of logging across all lands governed by the RMP, but the FEIS did not provide an analysis of how logging would impact the watersheds located within the project site. *Id.* The court held that “tiering to the RMP-EIS cannot save the EAs” because the EIS did not contain any “specific information” about environmental impacts within the project area. *Id.* Thus, tiering to a broader EIS that does not contain site-specific analysis about the environmental effects of a project does not satisfy NEPA obligations.

BLM cites to *Native Village of Nuiqsut v. Bureau of Land Mgmt.* and *Native Ecosystem Council v. Judice* to support their tiering argument. BLM at 29-31. However, these cases do the opposite; they support the F&R’s conclusion that tiering was inappropriate in this case.

In *Native Village*, BLM issued integrated activity plan and EIS that made nearly 12 million acres of public lands available for oil drilling in Alaska’s North Slope. 432 F. Supp. 3d

1003, 1012 (D. Alaska 2020). Later, BLM conducted an EA and approved a company's proposal for exploratory drilling during the winter season near Teshekpuk Lake. *Id.* at 1013. The EA tiered to the EIS's analysis. *Id.* at 1027. Plaintiffs challenged the EA arguing that it did not include an analysis of how drilling would affect caribou populations in the project area. *Id.* The EIS, to which the EA tiered, described in detail how caribou herd populations could be impacted by drilling, various population trends, and seasonal impacts to the species. *Id.* The EIS also anticipated significant exploration activity in the area approved by the EA, and it recognized that there would be a significant caribou presence near the Lake. *Id.* at 1027–31. The court held that because the EIS anticipated and analyzed the effects drilling would have on caribou in the project area, BLM adequately considered the effects of exploratory drilling on the caribou within the project area. Thus, the EA properly tiered to the EIS's analysis.

In *Judice*, BLM issued the Butte Range Management Plan and an accompanying EIS. The RMP specifically analyzed the environmental effects of vegetation and riparian management in the specific project area at issue in this case, the Iron Mask Planning Area. 2019 WL 1131231 at *4 (D. Mont. 2019). BLM issued an EA and final decision authorizing a vegetation and riparian treatment project in the Iron Mask Planning area, *Id.* at *2. Plaintiffs challenged the EA arguing that BLM improperly tiered the EA to the EIS because the EIS did not contain adequate analysis of the project's effects on the watershed in the Project area. *Id.* at *4. The court held that tiering was appropriate in this case because the RMP EIS analyzed the treatment's effects and authorized future grazing in the Iron Mask Planning Area. *Id.*

These cases do not support Defendants' argument that tiering the Project REA to the 2016 EIS satisfied NEPA because the RMP EIS did not consider the impacts of later site-specific projects. This case is unlike *Native Village* and *Judice* where an EIS analyzed potential

environmental affects in specific areas later authorized by an EA. The magistrate judge found that the 2016 RMP EIS only considered general consequences of timber projects that covered over 2.6 million acres; nowhere in the 2016 RMP EIS is there a site-specific analysis of the Project's environmental effects on Marbled Murrelets within the Project area. F&R at 8–9. Further, in their objections, Defendants do not point the court to any information contained in the administrative record that would support the claim that BLM conducted a site-specific analysis. In fact, BLM admits that “the scale of BLM’s 2016 NEPA analysis was not specific only to the Project area but encompassed all of the Harvest Land Base acreage.” BLM at 25. While the 2016 FEIS contains a broad analysis of a large network of reserved lands that would provide protections for the species and generally predicts reserved lands will benefit Marbled Murrelets, FEIS at 846–47, the FEIS does not contain any analysis on how the Project affects the species. Thus, the F&R did not err in finding that tiering the REA to the 2016 RMP EIS was inappropriate.

I recommend that the court adopt the magistrate judge’s findings and conclusions on whether BLM properly tiered the REA to the 2016 EIS.

Applicant Details

First Name **James**
 Last Name **Blum**
 Citizenship Status **U. S. Citizen**
 Email Address jamesablum@gmail.com
 Address

Address

Street
8960 West Post Road Unit 2041
City
Las Vegas
State/Territory
Nevada
Zip
89148
Country
United States

Contact Phone Number
9734954662

Applicant Education

BA/BS From **Brandeis University**
 Date of BA/BS **May 2007**
 JD/LLB From **Vanderbilt University Law School**
<http://law.vanderbilt.edu/employers-cs/judicial-clerkships/index.aspx>
 Date of JD/LLB **May 11, 2013**
 Date of LLM **July 28, 1985**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Vanderbilt Journal of Transnational Law**
 Moot Court Experience **No**

Bar Admission

Admission(s) **New York**

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate Judicial
Law Clerk **Yes**

Specialized Work Experience**References**

1. Raymond Milavsky, Retired First Assistant Prosecutor, Formerly of the Office of the Burlington County Prosecutor, (609) 820-1214, rmilavsky@gmail.com. 2. Bessie Weiss, Assistant Attorney General, Office of the Vermont Attorney General, (802) 881-5939, bessie.weiss@vermont.gov. 3. Melissa Petrozza, Assistant Attorney General, Office of the Vermont Attorney General, (914) 646-2192, melissa.petrozza@vermont.gov.

This applicant has certified that all data entered in this profile and any application documents are true and correct.

May 6, 2022

Dear Judge Hanes:

My name is James (Jim) Blum, and I am writing to apply for the position of Term Law Clerk. In 2013, I earned a J.D. from Vanderbilt University Law School, and I am licensed to practice law in New York. I am currently employed by the United States Attorney's Office for the District of Nevada as an Assistant United States Attorney in the Civil Division.

Throughout my career as an attorney, I have successfully assumed a variety of legal roles, and I believe that my experiences will enable me to make a meaningful contribution to your chambers. I have maintained substantial civil-, criminal-, and administrative-litigation caseloads, for which I have managed discovery, taken depositions, prepared witnesses, and acted as first chair in evidentiary hearings, motion arguments, and trials. Further, I have provided my government employers with transactional, drafting, community-engagement, and compliance services.

In my current role as an Assistant United States Attorney, I practice federal asset-forfeiture law. This work entails engaging with federal prosecutors, federal, state, and local agencies, retailers, and accounting and real estate professionals on the custody, management, and disposition of property. To do so, I draw on the Code of Federal Regulations, federal statutory law, federal and state judicial precedent, and policy manuals promulgated by the Department of Justice and Department of the Treasury. My duties touch on property law in a wide range of contexts, from working with forensic accountants to trace property into and through bank accounts, to performing value analyses on real properties by referencing liens, equitable claims, pending bankruptcy litigation, and federal sale procedures, to evaluating theories of economic recovery against assets like stock shares and cryptocurrencies. I also maintain a civil-defensive practice, primarily focused on personal-injury lawsuits brought against the United States and its agencies.

In my previous role as an Assistant Attorney General in Vermont, I was assigned to the Department of Vermont Health Access. There, I managed a large administrative-litigation caseload that involved challenges to Vermont's exchange- and Medicaid-related eligibility decisions, both financial- and services-based. I also regularly worked with contract administrators to review, edit, and identify regulatory and litigation risks in healthcare contracts and grants. Prior to joining the Office of the Vermont Attorney General, I worked as an Assistant Prosecutor in New Jersey, and before that I spent one year as a Judicial Law Clerk in the Superior Court of New Jersey, Appellate Division.

Thank you for taking the time to consider my application, and I hope to hear from you in the near future. I can be reached at (973) 495-4662 or jamesablum@gmail.com.

Sincerely,

James A. Blum

James A. Blum

Phone: (973) 495-4662 Email: jamesablum@gmail.com

Education

Vanderbilt University Law School, Nashville, TN

J.D., May 2013

Activities and Honors: Vanderbilt Journal of Transnational Law (Article Selection Editor); Lightfoot, Franklin, and White Award (Best Oralist); Dean's List

Brandeis University, Waltham, MA

B.A. English Literature, Creative Writing, and History, *magna cum laude*, May 2007

Honors: Phi Beta Kappa; Phi Alpha Theta; Dean's List

Bar Membership

New York (Jan. 2014); District of Nevada (Mar. 2019)

Experience

United States Attorney's Office, District of Nevada, Las Vegas, NV (Mar. 2019–Present)

Assistant United States Attorney: Consult with, and advise, agencies on compliance with asset-forfeiture laws and regulations; litigate asset-forfeiture issues in civil, criminal, and bankruptcy actions; draft complaints, discovery documents, motions, and briefs; review and edit asset-forfeiture filings; present oral argument on district-court motions; provide law-enforcement training; evaluate theories of property ownership and recovery; coordinate with accounting and realty professionals on asset valuation and management

Office of the Vermont Attorney General, Waterbury, VT (Nov. 2016–Feb. 2019)

Assistant Attorney General: Reviewed and edited healthcare contracts and grants; litigated administrative healthcare appeals; advised on compliance with healthcare guidance, regulations, and statutes; assisted with regulation drafting; consulted with healthcare-industry stakeholders on agency regulations and policies

Office of the Burlington County Prosecutor, Mount Holly, NJ (Aug. 2014–Jun. 2016)

Assistant Prosecutor: Screened and litigated juvenile and adult criminal matters; indicted adult criminal cases; reviewed and obtained search warrants

New Jersey Superior Court, Appellate Division, Atlantic City, NJ (Aug. 2013–Aug. 2014)

Judicial Law Clerk (Honorable Carmen H. Alvarez): Researched civil, criminal, and administrative law; wrote weekly panel memos; proofed and edited draft opinions

Personal

Amateur Ceramic Sculptor; Home Beer- and Wine-maker; Jogger and Cyclist; Whippet Owner

OFFICE OF THE UNIVERSITY REGISTRAR
NASHVILLE, TENNESSEE 37240

VANDERBILT UNIVERSITY

Page 1 of 2

Name : James Alexander Blum
Student # : 000175915
Birth Date : 07/28Information contained in this document is confidential and should not be
released to a third party without the written permission of the student.
This transcript is printed on gold SCRIP-SAFE™ security paper.
A black and white document is not official.

Degree(s) Awarded

Degree: Doctor of Jurisprudence
Confer Date: 2013-05-10
Major: Law

Prior Degree(s)

Brandeis University
Bachelor of Arts 2007-05-01

Academic Program(s)

Law J.D.
Law Major

Law Academic Record (4.0 Grade System)

LAW	605	Life of the Law	1.00	P	0.00
Instructor:		Suzanna Sherry Kevin Stack			
LAW	606	Contracts	4.00	A-	14.80
Instructor:		John Haley			
LAW	610	Regulatory State	4.00	B	12.00
Instructor:		Lisa Bressman			
LAW	614	Legal Writing I	2.00	B+	6.60
Instructor:		Martin Cerjan Dorothy Keenan			
LAW	621	Torts	4.00	B+	13.20
Instructor:		Nita Farahany			

SEMESTER:	EHRS	QHRS	QPTS	GPA
	15.00	14.00	46.60	3.328

LAW	603	Civil Procedure	4.00	B	12.00
Instructor:		Brian Fitzpatrick			
LAW	608	Constitutional Law I	3.00	A-	11.10
Instructor:		Robert Mikos			
LAW	613	Criminal Law	3.00	B+	9.90
Instructor:		Terry Maroney			
LAW	615	Legal Writing II	2.00	B+	6.60
Instructor:		Martin Cerjan Dorothy Keenan			
LAW	* 620	Property	4.00	B	12.00
Instructor:		Michael Vandenberg			

SEMESTER:	EHRS	QHRS	QPTS	GPA
	16.00	16.00	51.60	3.225

LAW	577	Jrn'l Transnat'l Law	0.00	P	0.00
Instructor:		Ingrid Wuert			
LAW	719	Crim Pro: Investigation	3.00	B+	9.90
Instructor:		Christopher Slobogin			
LAW	804	Externship-In Nashville	3.00	P	0.00
Instructor:		Susan Kay			
LAW	835	Transnational Litigation	3.00	A-	11.10
Instructor:		John Haley			
LAW	848	Constitutional Law II	3.00	B	9.00
Instructor:		James Blumstein			
LAW	892	Appellate Practice & Pro	2.00	A-	7.40
Instructor:		Alistair Newbern			

SEMESTER:	EHRS	QHRS	QPTS	GPA
	14.00	11.00	37.40	3.400

LAW	577	Jrn'l Transnat'l Law	1.00	P	0.00
Instructor:		Ingrid Wuert			
LAW	692	Conflict of Laws	4.00	B+	13.20
Instructor:		Erin O'Hara			
LAW	708	Corporations	3.00	B	9.00
Instructor:		Randall Thomas			
LAW	745	First Amend Con Law	3.00	A-	11.10
Instructor:		David Hudson			
LAW	749	Evidence	4.00	B+	13.20
Instructor:		Tracey George			

SEMESTER:	EHRS	QHRS	QPTS	GPA
	15.00	14.00	46.50	3.321

LAW	577	Jrn'l Transnat'l Law	1.00	P	0.00
Instructor:		Ingrid Wuert			
LAW	682	Trial Advocacy	3.00	P	0.00
Instructor:		Thomas Wiseman Sheila Calloway			
LAW	750	Political & Legal Environment	3.00	B-	8.10
Instructor:		Kevin Stack Alan Wiseman			
LAW	798	Professional Respons.	3.00	B+	9.90
Instructor:		David Hudson			
LAW	806B	Trans Journal Pub Note	1.00	P	0.00
Instructor:		Ingrid Wuert			
LAW	807	Intellectual Prop Survey	4.00	A-	14.80
Instructor:		Daniel Gervais			

SEMESTER:	EHRS	QHRS	QPTS	GPA
	15.00	10.00	32.80	3.280

Term Honor: Dean's List
2013 Spring
2013 Spring

U.S. Mail Blum

James A. Blum
3913 Ocean Avenue # 4
Brigantine, NJ 08203-3391STUDENT IS ELIGIBLE TO ENROLL UNLESS OTHERWISE NOTED.
SIGNATURE IS WHITE WITH A GOLD BACKGROUND.
A RAISED SEAL IS NOT REQUIRED.BART P. QUINN
Date: 09/09/2013
UNIVERSITY REGISTRAR

OFFICE OF THE UNIVERSITY REGISTRAR
NASHVILLE, TENNESSEE 37240

VANDERBILT UNIVERSITY

Page 2 of 2

Name : James Alexander Blum
Student # : 000175915
Birth Date : 07/28

Information contained in this document is confidential and should not be
released to a third party without the written permission of the student.
This transcript is printed on gold SCRIP-SAFE® security paper.
A black and white document is not official.

LAW	577	Jrn'l Transnat'l Law	1.00	P	0.00
Instructor:		Ingrid Wueth			
LAW	695	State Constitutional Law	2.00	B+	6.60
Instructor:		William Koch			
LAW	817	Cmp Law: Eur, Lat. Am, E Asia	3.00	A	12.00
Instructor:		John Haley			
LAW	866	Wills and Trusts	4.00	A-	14.80
Instructor:		Jeffrey Schoenblum			
LAW	910	Federalism Seminar	3.00	A	12.00
Instructor:		Robert Mikos			

SEMESTER:	EHR	QHR	QPT	GPA
	13.00	12.00	45.40	3.783
Law Career Totals				
CUMULATIVE:	88.00	77.00	260.30	3.380

----- NO ENTRIES BELOW THIS LINE -----



U.S. Mail Blum

James A. Blum
3913 Ocean Avenue # 4
Brigantine, NJ 08203-3391

STUDENT IS ELIGIBLE TO ENROLL UNLESS OTHERWISE NOTED.
SIGNATURE IS WHITE WITH A GOLD BACKGROUND.
A RAISED SEAL IS NOT REQUIRED.

BART P. QUINN
Date: 09/09/2013
UNIVERSITY REGISTRAR



BRANDEIS UNIVERSITY

Official Transcript



Brandeis University

Waltham, Massachusetts 02453-2728

Mark S. Hewitt,
University Registrar

Send To: James Blum
107 Acklen Park Drive
Apt. # 305
Nashville, TN 37203
United States

Name : James A. Blum

Student ID: 20143693

CUM GPA : 3.918 CUM TOTALS : 16.00 24.00 62.680

----- Degrees Awarded -----

Dean's List

Degree : Bachelor of Arts

Confer Date : 2007-05-20

Degree GPA : 3.914

Degree Honors : Magna Cum Laude

Plan : Major in English and American Literature

Plan : Major in Creative Writing

Plan : Major in History

Plan : Minor in Medieval and Renaissance Studies

Program : Arts and Sciences

Completed Program

English & American Literature Major

Creative Writing Major

History Major

Medieval & Renaissance Studies Minor

----- Beginning of Undergraduate Record -----

Fall Semester 2003

Course	Description	Attempted	Earned	Grade	Points
--------	-------------	-----------	--------	-------	--------

Transfer Credit from College Board /Adv. Placement

Applied Toward Arts and Sciences Program

4AP	TS0007 AP U.S. History - SS	4.00	4.00	T	
-----	-----------------------------	------	------	---	--

4AP	TS0043 AP European History - SS	4.00	4.00	T	
-----	---------------------------------	------	------	---	--

Course Trans GPA:	0.000	Transfer Totals :	0.00	8.00	0.000
-------------------	-------	-------------------	------	------	-------

ENG	177A	HITCHCOCK'S MOVIES	4.00	4.00	A	16.000
-----	------	--------------------	------	------	---	--------

PHSC	2B	INTRODUCTORY ASTRONOMY	4.00	4.00	A	16.000
------	----	------------------------	------	------	---	--------

SPAN	10A	BEGINNING SPANISH	4.00	4.00	A	16.000
------	-----	-------------------	------	------	---	--------

USEM	74A	IMAGINING GOVERNANCE	4.00	4.00	A-	14.680
------	-----	----------------------	------	------	----	--------

TERM GPA :	3.918	TERM TOTALS :	16.00	16.00	62.680
------------	-------	---------------	-------	-------	--------

Student ID: 20143693 Name : James A. Blum

Page 1 of 2

09/14/2011

Spring Semester 2004

Course	Description	Attempted	Earned	Grade	Points
ENG 125B	ROMANTICISM II	4.00	4.00	A	16.000
HIST 181A	SEM:TRADTNL CHIN.THUGHT	4.00	4.00	A	16.000
SPAN 20B	CONTINUING SPANISH	4.00	4.00	A	16.000
UWS 3B	UNIVERSITY WRITING SEM.	4.00	4.00	A	16.000

TERM GPA :	4.000	TERM TOTALS :	16.00	16.00	64.000
------------	-------	---------------	-------	-------	--------

CUM GPA : 3.959 CUM TOTALS : 32.00 40.00 126.680

Dean's List

Fall Semester 2004

Course	Description	Attempted	Earned	Grade	Points
ENG 19B	THE AUTOBIO IMAGINATION	4.00	4.00	CR	
ENG 33A	SHAKESPEARE	4.00	4.00	A-	14.680
ENG 119A	DIRECTED WRITING: FICTION	4.00	4.00	CR	
PE 43A	DANCE DANCE REVOLUTION		0.00	S	
SPAN 34A	INTER. SPANISH: CULTURE	4.00	4.00	A	16.000

TERM GPA :	3.835	TERM TOTALS :	16.00	16.00	30.680
------------	-------	---------------	-------	-------	--------

CUM GPA : 3.934 CUM TOTALS : 48.00 56.00 157.360

Spring Semester 2005

Course	Description	Attempted	Earned	Grade	Points
ENG 11A	INTRO TO LITERARY METHOD	4.00	4.00	A-	14.680
HIST 110B	CIV-HIGH/LATE MIDDLE AGE	4.00	4.00	A-	14.680
HIST 126A	EARLY MOD.EUR.1500-1700	4.00	4.00	A-	14.680
HUM 10A	THE WESTERN CANON	4.00	4.00	A	16.000

BRANDEIS UNIVERSITY

Official Transcript

Send To: James Blum
107 Acklen Park Drive
Apt. # 305
Nashville, TN 37203
United States



Brandeis University
Waltham, Massachusetts 02453-2728

Mark S Hewitt
Mark S Hewitt,
University Registrar

TERM GPA :	3.753	TERM TOTALS :	16.00	16.00	60.040	ENG 98A	INDEPENDENT STUDY	4.00	4.00	A-	14.680
CUM GPA :	3.882	CUM TOTALS :	64.00	72.00	217.400	HIST 71A	LAT AM HIST:PRECONQ-1870	4.00	4.00	A	16.000
Dean's List						HIST 112B	CRUSADES/EXPANS.-MED EUR	4.00	4.00	A+	16.000
						TERM GPA :	3.918	TERM TOTALS :	16.00	16.00	62.680

Fall Semester 2005

CUM GPA : 3.918 CUM TOTALS : 112.00 120.00 376.080
Dean's List

Course	Description	Attempted	Earned	Grade	Points
ENG 119A	DIRECTED WRITING: FICTION	4.00	4.00	CR	
ENG 152B	ARTHURIAN LITERATURE	4.00	4.00	A	16.000
FA 191B	RENAISSANCE/BAROQUE ART	4.00	4.00	A+	16.000
Course Topic(s): The Genius of Michelangelo					
NEJS 111A	THE HEBREW BIBLE/OLD TESTAMENT	4.00	4.00	A	16.000
PE 11A	NAUTILUS/FREE WEIGHTS		0.00	S	
TERM GPA :	4.000	TERM TOTALS :	16.00	16.00	48.000
CUM GPA :	3.903	CUM TOTALS :	80.00	88.00	265.400
Dean's List					

Spring Semester 2007

Course	Description	Attempted	Earned	Grade	Points
ENG 108A	LITERATURE & HERESY	4.00	4.00	A-	14.680
FA 60A	BAROQUE:ITALY & SPAIN	4.00	4.00	A	16.000
HIST 120A	BRITIAN: LATER MID. AGES	4.00	4.00	A+	16.000
TERM GPA :	3.890	TERM TOTALS :	12.00	12.00	46.680
CUM GPA :	3.914	CUM TOTALS :	124.00	132.00	422.760
Dean's List					

Spring Semester 2006

----- End of Transcript -----

Course	Description	Attempted	Earned	Grade	Points
COML 103B	MADNESS/FOLLY-RENAIS LIT	4.00	4.00	A	16.000
ENG 119A	DIRECTED WRITING: FICTION	4.00	4.00	CR	
HIST 110A	CIV.-EARLY MIDDLE AGES	4.00	4.00	A+	16.000
HIST 153B	SLAVERY & AMER CIVIL WAR	4.00	4.00	A	16.000
TERM GPA :	4.000	TERM TOTALS :	16.00	16.00	48.000
CUM GPA :	3.918	CUM TOTALS :	96.00	104.00	313.400
Dean's List					

Fall Semester 2006

Course	Description	Attempted	Earned	Grade	Points
ENG 43A	CHAUCE TO MILTON	4.00	4.00	A	16.000

Student ID: 20143693 Name : James A. Blum

Page 2 of 2

09/14/2011

TO VERIFY: TRANSLUCENT GLOBE LOGOS MUST BE VISIBLE WHEN HELD TOWARD A LIGHT SOURCE

Brandeis University
Office of the University Registrar
Mailstop 068
415 South Street
Waltham, Massachusetts 02453-2728
(781) 736-2010
www.brandeis.edu/registrar

ACCREDITATION: Brandeis University is accredited by the New England Association of Schools and Colleges.

ACADEMIC YEAR: The academic year consists of fall and spring terms. The summer undergraduate program consists of two five-week sessions. The Master of Business Administration (Heller) summer program consists of two six-week sessions. The academic year for Rabl School of Continuing Studies consists of three ten week terms: fall, spring and summer. Other graduate summer programs vary in length.

COURSE CHARACTERISTICS: Graduate and undergraduate courses normally meet for the equivalent of three fifty-minute sessions per week.

COURSE SUFFIXES: "A" and "B" denote semester courses; "D" denotes a year course and is worth 8 credits, "C" denotes a yearlong course worth 4 credits; "E" denotes an intensive course worth 8 credit hours taught within a single semester; and "F" denotes a half-semester course worth 2 credits. "G" denotes a quarter-course with 1 credit. "AJ" or "BJ" denotes a Justice Brandeis semester course. Continuing Studies courses normally meet for the equivalent of three hours per week and carry 3 semester hours of credit.

COURSE NUMBERING SYSTEMS:

- 1 - 99 For undergraduates
- 100 - 199 For advanced undergraduates and graduate students
- 200 - 299 For graduate students - undergraduates only with special permission
- 300 - 399 Primarily independent study and reading courses for graduate students
- 400 - 450 Dissertation research courses
- 500 Registration in terms of time. A device permitting study which bypasses formal courses. For advanced graduate students only.
- 600 & 601 Continuation to the master's or doctorate. For students who have completed course work and residence requirements and who are finishing other degree requirements.
- 650 Continuation to the doctorate. For students who have been granted an extension to complete the degree.

CROSS REGISTRATION: Brandeis students have cross-registration privileges with several schools in the Boston area. Courses taken at these schools have a subject code of 9CRG. Grades from courses taken through cross-registration are not included in computing the GPA.

TRANSFER CREDIT: Transfer credit applied toward a Brandeis degree appears with the source, the subject area of the course(s), and the aggregate credits awarded from that source for the given term. Aggregate credits appear as a course notation with the subject code of 2TRF.

GRADING SYSTEM: The basic grading system consists of letter grades as follows, with a plus or minus if appropriate: A (High Distinction), B (Distinction), C (Satisfactory), D (Passing but Unsatisfactory) and E (Failure). A "P" is assigned for performance at the D- level or higher. Other valid grades are CR (Credit), NC (no credit), W (dropped), WL (dropped belatedly), S (satisfactory), U (unsatisfactory), XI, EI, I (incomplete), XA, EA (absent from final examination), and NG or blank (no grade submitted). Z is an administrative notation.

GPA's are not calculated for graduate students. Undergraduate student GPA's are calculated only using Brandeis courses with letter grades of A through E. Graduate students may audit courses, an option denoted by "AU".

The numerical equivalents of the grades as determined by the faculty are:
A (A+) = 4.00; A = 3.67; B+ = 3.33; B = 3.00; B- = 2.67; C+ = 2.33; C = 2.00; C- = 1.67;
D+ = 1.33; D = 1.00; D- = 0.67 and E = 0.00.

RECORDS POLICY: As required by the Family Educational Rights and Privacy Act of 1974 (FERPA), information contained in this document is confidential and may not be released to a third party without the written consent of the individual whose record it is.

An authentic transcript bears a dark border at the top and bottom on a light blue field. A transcript guide appears on the reverse side. If the transcript is copied, the word "COPY" will appear on the face of the document. The transcript will also contain a global watermark, which can be seen under light. A black and white or colored copy is not official and should not be accepted as an official Brandeis University document. A raised seal is not required.

TO TEST FOR AUTHENTICITY: Translucent globe icons *MLST* be visible from both sides when held toward a light source. The face of this transcript is printed on blue SCRIP-SAFE® paper. When photocopied, a latent security statement containing the institutional name and the words COPY COPY COPY appear over the face of the entire document. When this paper is touched by fresh liquid bleach, an authentic document will stain. A black and white or color copy of this document is not an original and should not be accepted as an official institutional document. This document cannot be released to a third party without the written consent of the student. This is in accordance with the Family Educational Rights and Privacy Act of 1974. If you have any questions about this document, please contact our office at (781) 736-2010. ALTERATION OF THIS DOCUMENT MAY BE A CRIMINAL OFFENSE!

SCRIP-SAFE® Security Products, Inc. Cincinnati, OH • U.S. Patent 5,171,040

NICHOLAS A. TRUTANICH
United States Attorney
District of Nevada
Nevada Bar Number 13644
JAMES A. BLUM
Assistant United States Attorney
501 Las Vegas Boulevard South, Suite 1100
Las Vegas, Nevada 89101
(702) 388-6336
james.blum@usdoj.gov
Attorneys for the United States

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

\$1,106,775.00 IN UNITED STATES
CURRENCY,

Defendant.

3:20-CV-158-MMD-WGC

**United States of America's Reply to
Claimants' Opposition to Plaintiff's
Supp. R. G(8)(c)(i)(A) Motion to Strike
Claimant Oak Porcelli's Judicial Claim**

Reply and Memorandum of Points and Authorities

I. Introduction

Plaintiff United States of America makes this Reply to Claimants Oak Porcelli's and Gina Pennock's Opposition to Plaintiff's Supplemental Rule for Admiralty or Maritime Claims and Asset Forfeiture Actions (Supp. R.) G(8)(c)(i)(A) Motion to Strike Claimant Oak Porcelli's Judicial Claim, ECF No. 51. Plaintiff makes this Reply pursuant to Local Rules LR 7-2(b) and LR 7-3(b).

In Plaintiff's Motion to Strike, it argues that Porcelli's Judicial Claim should be struck because of his failures to comply with Supp. R. G(6) and the Orders of this Court. In Claimants' Opposition, they fail to address the issues pending before this Court, and they cite authority that does not support their position. This Court should reject Claimants' arguments and grant Plaintiff's Supp. R. G(8)(c)(i)(A) Motion to Strike.

1 **II. Argument**

2 In Claimants' Opposition, they do not provide any direct argument explaining how,
 3 in light of United States Magistrate Judge William G. Cobb's August 11, 2020 Minute Order
 4 and Chief United States District Judge Miranda M. Du's November 23, 2020 Order,
 5 Porcelli's supplementation was fully and completely responsive to Plaintiff's special
 6 interrogatories on a per-interrogatory basis. Instead, they survey a collection of Ninth Circuit
 7 forfeiture cases and argue that Porcelli has standing, attack Plaintiff's reliance on certain
 8 Ninth Circuit district-court cases, and state that Porcelli "will not [further respond to the
 9 government's Special Interrogatories] . . . absent some clear directive from this Court as to
 10 why or how he does not have 'threshold standing' here." *See* Opp. Second Mot. Strike G(6),
 11 ECF No. 51, 4:7 to 6:4; 8:24 to 9:16; 10:16 to 11:12; 12:7-22; *see also* ECF No. 51, 9:13 n.8
 12 (stating that Claimants provided Plaintiff with a supplementation but failing to demonstrate
 13 how it complied with this Court's Orders).

14 Because Claimants do not meaningfully discuss the particulars of Porcelli's
 15 supplementation, Plaintiff will rely on the arguments contained in its Motion for purposes of
 16 that issue. With respect to the arguments that Claimants do make, this Court should reject
 17 them. First, the Ninth Circuit cases discussed by Claimants do not support their position.
 18 Second, the Ninth Circuit district-court cases cited by Plaintiff directly address the issues
 19 relevant to Plaintiff's Motion and support the granting of that Motion. In addition,
 20 Claimants' statement that Porcelli will not further supplement his special-interrogatory
 21 responses absent a certain finding from this Court is unwarranted and, more, would
 22 substantiate an alternative finding by this Court that further opportunities to cure would be
 23 futile or unjustified.

24 A. The cases cited by Claimants do not support their position.

25 In Section II of Claimants' Opposition, they cite five Ninth Circuit cases, arguing that
 26 Porcelli unquestionably has standing under those decisions. *See* ECF No. 51, 3:18 to 6:4.
 27 Based on that conclusion, Claimants go on to assert that Porcelli has "fully satisfied Article
 28 III [standing] . . . requirements" and, thus, "has no obligation to further respond to the

1 government's Special Interrogatories." See ECF No. 51, 9:9-11. Claimants' arguments are
 2 both incorrect and, given the issues actually pending before this Court, inapposite.

3 As an initial matter, this Court has rejected Claimants' contention. Judge Cobb
 4 "disagree[d]" with the argument that "Porcelli's answers to the special interrogatories only
 5 need to establish that he claims . . . ownership and the property was seized from his
 6 possession." See Min. Order Mots. Compel & Stay Sub. Disc., ECF No. 38, 3:22 to 4:2.
 7 More, as Judge Cobb explained, it was necessary for Porcelli to provide the details sought
 8 by Plaintiff's special interrogatories because of the pendency of litigation on Porcelli's
 9 ultimate standing and his innocent-owner affirmative defense, and for support Judge Cobb
 10 cited *United States v. JP Morgan Chase Bank Account Number Ending in 8215*, 835 F.3d 1159 (9th
 11 Cir. 2016), *United States v. Real Property Located at 17 Coon Creek Road, Hawkins Bar California,*
 12 *Trinity County*, 787 F.3d 968 (9th Cir. 2015), *United States v. \$133,420.00 in U.S. Currency*, 672
 13 F.3d 629 (9th Cir. 2012), and *United States v. \$295,726.42 in Account Funds Seized*, 279 F. Supp.
 14 3d 1050 (C.D. Cal. 2018). See ECF No. 38, 5:6 to 6:20. Plaintiff has addressed this particular
 15 contention of Claimants at length in its other filings, explaining that (1) Porcelli's ability to
 16 satisfy a hypothetical Supp. R. G(8)(c)(i)(B) motion to strike is not clear; (2) even were
 17 Porcelli to survive such a motion, he would still need to satisfy a higher burden on standing
 18 under a Supp. R. G(8)(c)(i)(B) motion for a hearing on standing, rendering standing still at
 19 issue; and (3) Porcelli's obligation to respond to Plaintiff's special interrogatories goes
 20 substantially beyond providing the bare information that might satisfy a Supp. R.
 21 G(8)(c)(i)(B) motion to strike under the intermediate (summary-judgment) standard. See, e.g.,
 22 Mot. Compel, ECF No. 28, 11:22 to 13:21; Reply Mot. Compel, ECF No. 33, 2:19 to 8:12;
 23 Obj. Min. Order, ECF No. 39, 9:16 to 12:17; Second Mot. Strike G(6), ECF No. 49, 11:18
 24 to 13:15.

25 Although Plaintiff challenges Porcelli's ultimate standing, the Motion to Strike
 26 pending before this Court is not a motion substantively attacking Porcelli's standing (which
 27 would be a Supp. R. G(8)(c)(i)(B) motion); rather, Plaintiff asks this Court to strike Porcelli's
 28 Judicial Claim on procedural grounds, for his failure to comply with Supp. R. G(6) (which

1 is a Supp. R. G(8)(c)(i)(A) motion). With one exception, the Ninth Circuit cases from Section
 2 II of Claimants' Opposition relate to substantive attacks on standing and, for that reason, do
 3 not govern the resolution of Plaintiff's Motion.

4 In *United States v. \$191,910.00 in U.S. Currency*, 16 F.3d 1051, 1057-58 (9th Cir. 1994)—
 5 which has been superseded by statute and rule and had its holding on standing limited as
 6 applicable only to the lowest standard under the current rubric, *see \$133,420.00*, 672 F.3d at
 7 637-38—the government's motion was a substantive challenge to the claimant's standing.
 8 The *\$133,420.00* decision concerned a motion attacking Article III standing—which was
 9 successful and upheld on appeal—and explained that a claimant is obliged to provide details,
 10 in response to special interrogatories, beyond those relevant to demonstrating standing under
 11 the summary-judgment (intermediate) standard. *See* 672 F.3d at 638-39, 642-43. *United States*
 12 *v. \$999,830.00 in U.S. Currency*, 704 F.3d 1042, 1042-42 (9th Cir. 2012), also involved a motion
 13 to strike for lack of Article III standing. And, the *United States v. International Human Rights*
 14 *Commission*, 825 Fed. Appx. 468, 469 (9th Cir. 2020), decision reviewed a district-court order
 15 granting a motion to strike for lack of Article III standing. In the cited decision that did
 16 concern a Supp. R. G(8)(c)(i)(A) motion to strike—*17 Coon Creek Road*—the court held that
 17 a Supp. R. G(8)(c)(i)(A) motion was akin to a motion for a discovery sanction and that a
 18 claimant's claim should only be struck after affording an opportunity to cure or making a
 19 finding of futility or past discovery abuses. *See* 787 F.3d at 974-75, 979.

20 As noted, Plaintiff has not filed a Supp. R. G(8)(c)(i)(B) motion to strike. Indeed,
 21 Plaintiff's issuance of its special interrogatories and pursuit of full and complete answers to
 22 them—prior to filing any Supp. R. G(8)(c)(i)(B) motion—has been done in an effort to avoid
 23 the very pitfalls identified in some of the cases cited by Claimants (the filing of premature
 24 motions on underdeveloped records). Plaintiff has sought standing-related discovery to (1)
 25 evaluate whether to file a Supp. R. G(8)(c)(i)(B) motion; (2) determine whether to present
 26 any such motion as a summary-judgment motion, a motion for a hearing on standing, or
 27 both; and (3) identify, and be able to investigate, the necessary evidence and witnesses that
 28 would support any such motion, particularly for a motion for a hearing. *See generally* Supp.

1 R. G, Advisory Committee Note, Subdivision 8(c)(ii) (explaining that Supp. R. G(8)(c)(ii)
 2 “identifies three procedures” for making a Supp. R. G(8)(c)(i)(B) motion, which depend on
 3 the state of the evidentiary record on standing). Because Porcelli has contravened Plaintiff’s
 4 efforts to gather evidence on standing, Plaintiff has filed its Motion on procedural grounds
 5 (under Supp. R. G(8)(c)(i)(A)), arguing that Porcelli’s Judicial Claim should be struck as a
 6 type of discovery sanction. The Ninth Circuit cases cited by Claimants in Section II of their
 7 Opposition either say nothing about such a motion or, in the case of *17 Coon Creek Road*,
 8 simply provide the standards governing such a motion, which have been satisfied in this case.

9 With respect to Claimants’ related contention that Plaintiff is asking this Court to
 10 make a finding that “failing to respond to Rule G(6) interrogatories beyond what Porcelli
 11 has alleged, is tantamount to a lack of ‘threshold’ standing,” *see* ECF No. 51, 11:7-10 (second
 12 internal quotation marks omitted), that is belied by the Motion itself. As just discussed, and
 13 as detailed in Plaintiff’s Motion, *see* ECF No. 49, 3:14-18; 8:13-20; 16:8-11; 17:23-26, Plaintiff
 14 requests that this Court strike Porcelli’s Judicial Claim under Supp. R. G(8)(c)(i)(A) for
 15 failing to comply with Supp. R. G(6). Such relief is akin to seeking a discovery sanction. *See*
 16 *17 Coon Creek Road*, 787 F.3d at 975, 979. Plaintiff has not asked this Court to ultimately
 17 decide Porcelli’s standing because, as just noted, Plaintiff has not been able to obtain the
 18 discovery necessary to litigate that issue. And, Plaintiff has not argued to this Court that
 19 Porcelli’s failure to comply with Supp. R. G(6) in and of itself constitutes a standing defect;
 20 such a view would run contrary to *17 Coon Creed Road*. To the extent that Claimants view
 21 Plaintiff’s Supp. R. G(8)(c)(i)(A) Motion to Strike as seeking some unique relief—what they
 22 appear to refer to as the litigation of “threshold standing,” *see* ECF No. 51, 11:7-10 (internal
 23 quotation marks omitted)—that belief reflects a disagreement with this Court’s discretionary
 24 case-management decisions rather a meritorious argument that Plaintiff has filed any actual
 25 motion asking this Court to rule on Porcelli’s ultimate standing.

26 This Court should reject Claimants’ arguments premised on the Ninth Circuit cases
 27 cited in Section II of their Opposition. Those cases do not provide justifications for Porcelli’s
 28 noncompliance with Supp. R. G(6) and this Court’s Orders.

1 B. Claimants' attack on the Ninth Circuit district-court decisions cited by Plaintiff
 2 is without merit.

3 In Section IV of Claimants' Opposition, they argue that this Court should decline to
 4 follow the district-court cases cited by Plaintiff in its Motion to Strike. With respect to
 5 \$295,726.42 (and presumably the unpublished follow-up decision, *United States v. \$295,726.42*
 6 *in Account Funds Seized*, Case No.: SACV 17-00954-CJC (JCGx), 2018 WL 2077955 (C.D.
 7 Cal. May 3, 2019)), Claimants contend that United States District Judge Cormac J. Carney
 8 was "dead wrong" because his reasoning "controvert[ed] binding appellate authority." *See*
 9 ECF No. 51, 10:19-23. Claimants further assert that other district-court decisions cited by
 10 Plaintiff are "irrelevant." *See* ECF No. 51, n.9. Claimants' position is unconvincing.

11 With respect to the \$295,726.42 cases, Judge Carney struck a claimant's judicial
 12 claim—under Supp. R. G(8)(c)(i)(A)—after finding that the claimant had (1) failed to
 13 compliantly respond to a scope-appropriate special interrogatory; and (2) been given ample
 14 opportunities (both formal and informal) to cure. *See* 2018 WL 2077955 at *3-4 (internal
 15 quotation marks omitted). In that way, Judge Carney followed the procedures applicable to
 16 deciding a Supp. R. G(8)(c)(i)(A) motion, as outlined in *17 Coon Creek Road*. In the cited
 17 \$295,726.42 decisions, the court never ruled—implicitly or explicitly—on the claimant's
 18 ultimate standing, finding nothing more than that "the Government reasonably dispute[d]
 19 that [the claimant own[ed] the account funds." *See id.* at *4 n.5. It is unclear how Judge
 20 Carney failed to follow Ninth Circuit precedent; the court neither made a substantive
 21 decision on standing that was at odds with the standards articulated by the Ninth Circuit nor
 22 resolved a Supp. R. G(8)(c)(i)(A) motion in a manner inconsistent with *17 Coon Creek Road*.

23 Regarding the other decisions, Claimants assert that Plaintiff "mentions two
 24 additional irrelevant cases" and "it makes no sense whatsoever" that Plaintiff would cite
 25 them. *See* ECF No. 51, 11:6 n.9. As an initial matter, in Plaintiff's Motion it cited three cases
 26 in addition to the \$295,726.42 decisions: (1) *United States v. \$26,742.25 in U.S. Currency*, Case
 27 No.: CV 17-003640-CJC(SSx), 2017 WL 6389091 (C.D. Cal. Dec. 13, 2017); (2) *United States*
 28 *v. \$18,474.34 in Bank Account Funds*, Case No. SACF 10-1168 AG (RNBx), 2015 WL 4276360

(C.D. Cal. June 8, 2015); and (3) *United States v. \$333,806.93 in Proceeds*, No. CV 05-2556 DOC (ANx), 2010 WL 3733932 (C.D. Cal. Aug. 30, 2010). *See* ECF No. 49, 16:1-7.

Since Claimants do not address *\$333,806.93*, it is unclear what, if anything, they disagree with in that opinion. There, United States District Judge David O. Carter found that the claimant's repeated failures to adequately respond to the government's special interrogatories, after both formal and informal opportunities to cure, justified striking her claim under Supp. R. G(8)(c)(i)(A). *See* 2010 WL 3733932 at *1. Judge Carter evaluated the government's motion under the test for Fed. R. Civ. P. 37 sanctions (the case predated *17 Coon Creek Road*), determining that sanctions were warranted. *Id.* at *4. However, "in an abundance of caution," the court afforded the claimant another opportunity to cure, allowing her ten days to compliantly supplement her responses before granting the government's motion. *Id.* Like the *\$295,726.42* decisions, *\$333,806.93* treated repeated noncompliance with Supp. R. G(6) as a discovery violation warranting the striking of a judicial claim.

Turning to *\$26,742.25*, Claimants argue that this Court should discount the decision because, according to them, the court in that case "granted a default judgment because nobody filed a timely judicial claim." *See* ECF No. 51, 11:6 n.9. In the December 13, 2017 decision cited by Plaintiff (and by Claimants), *see* ECF No. 49, 16:5-6; ECF No. 51, 11:6 n.9, the phrase "default judgment" does not appear. *See* 2017 WL 6389091. The cited case involved the court's granting of a Supp. R. G(8)(c)(i)(A) motion after a claimant had been afforded numerous formal and informal opportunities to compliantly respond to the government's special interrogatories. *See id.* at *1, *4. Perhaps, Claimants' argument is addressed to the *\$26,742.25* court's subsequent March 13, 2018 decision, in which it granted the government's motion for a default judgment after having (1) struck the claimant's judicial claim (in the decision cited by Plaintiff in its Motion); (2) entered default against the claimant and all other potential claimants; and (3) denied other claimants' judicial claims that were filed after the court had entered default. *See United States v. \$26,742.25 in U.S. Currency*, Case No. CV 17-03640-CJC(SSx), 2018 WL 6164792, at *1-2, *4 (C.D. Cal. Mar. 13, 2018). In any event, the government's Supp. R. G(8)(c)(i)(A) motion was contested, and the court

1 found that the claimant's sustained noncompliance with Supp. R. G(6) warranted striking
 2 his claim. Thus, it is unclear how \$26,742.25 is meaningfully distinguishable from the
 3 \$295,726.42 decisions or from this matter or how it was inconsistent with *17 Coon Creek Road*.

4 As for \$18,474.34, Claimants attack that decision because "the claimant there was *pro*
 5 *se*, and had no idea what the law required and raised no cognizable issue opposing a motion
 6 to strike his claim." *See* ECF No. 51, 11:6 n.9 (emphasis in original). That case involved a
 7 claimant who failed to adequately respond to special interrogatories after the court granted
 8 a stipulation to allow the claimant to revise his special-interrogatory responses. *See* 2015 WL
 9 4276360 at *1. The claimant's noncompliance included "terse, nonresponsive, and largely
 10 unhelpful" answers and references "to various files, apparently placing the burden on the
 11 Government to determine the basis of his claim." *See id.* United States District Judge Andrew
 12 J. Guilford granted the government's motion to strike the claimant's judicial claim for
 13 noncompliance with Supp. R. G(6) but withheld the striking of the claim for ten days to
 14 allow the claimant another opportunity to cure. *See id.* at *2. While Claimants here highlight
 15 the \$18,474.34 claimant's *pro-se* status, they fail to specify the arguments that would have
 16 resulted in a different outcome. Perhaps, the claimant might have better answered the
 17 government's special interrogatories had he been represented. Nevertheless, in the context
 18 of a court faced with repeatedly deficient special-interrogatory responses, it is unclear how
 19 the legal framework would change, other than perhaps affording an additional opportunity
 20 to cure (which Judge Guilford did). To the extent that Claimants suggest that their
 21 arguments, made in this case, undermine the rightness of Judge Guilford's decision, those
 22 arguments would have been equally unavailing, for the reasons already discussed.

23 Claimants' attempt to distinguish the district-court cases cited by Plaintiff is without
 24 merit. This Court should treat those decisions as legally correct, persuasive authority.

25 C. Claimants' Opposition demonstrates that further opportunities to cure would be
 26 futile or unjustified.

27 In Section II of Claimants' Opposition, they state: "Claimant Porcelli has no
 28 obligation to further respond to the government's Special Interrogatories and will not do so,

1 particularly absent some clear directive from this Court as to why or how he does not have
2 ‘threshold standing’ here.” ECF No. 51, 9:10-13. Claimants’ demand for a particular ruling
3 from this Court does not justify continued noncompliance with Supp. R. G(6) and supports
4 an alternate finding that providing further opportunities to cure would be futile or unjustified.

5 As noted above and discussed in Plaintiff’s past filings, this Court’s decision to
6 sequence this case such that the issue of standing would be resolved ahead of the merits was
7 an exercise of its case-management discretion. *See* Mot. Pend & Extend, ECF No. 50, 4:20
8 to 5:17. And, as also explained, (1) Plaintiff has never filed a Supp. R. G(8)(c)(i)(B) motion;
9 (2) Plaintiff has not been able to obtain necessary standing-related evidence; and (3)
10 Plaintiff’s Motion seeks a ruling on procedural misconduct, not a ruling on substantive
11 standing. *See* ECF No. 49, 11:18 to 17:26. Thus, it is unclear why Claimants believe that the
12 Court would be presently obligated to substantively adjudicate Porcelli’s standing.

13 In Plaintiff’s Motion to Strike, it indicated that it would not object to providing
14 Porcelli an additional opportunity to cure, *see* ECF No. 49, 2:7-21, and that is still the case.
15 Nevertheless, in light of the above-quoted statement from Section II of Claimants’
16 Opposition, this Court would be justified in making a finding not only that Porcelli has failed
17 to comply with Supp. R. G(6) after sufficient opportunities to cure but, also and in the
18 alternative, that providing him additional chances to cure would be futile or, at the very least,
19 unjustified, given his conduct in discovery. In *17 Coon Creek Road*, the court stated: “[C]ourts
20 typically afford claimants one or even several opportunities to cure defective Rule G(6)
21 responses, except where the circumstances indicate that it would be futile to do so or reflect
22 persistent discovery abuses.” 787 F.3d at 973.

23 Here, Porcelli has (1) been afforded numerous informal opportunities by Plaintiff to
24 compliantly respond to Plaintiff’s special interrogatories; (2) been compelled by Judge Cobb
25 to fully and completely respond to Plaintiff’s special interrogatories, a decision that was
26 upheld by Judge Du; (3) when supplementing, either insufficiently responded to those special
27 interrogatories or, with respect to Interrogatories 5, 9, 10, 11, 12, and 13, simply ignored the
28 Court’s Orders; and, now, (4) refused to further supplement absent a particular finding,

which this Court has no obligation to make. *See* ECF No. 49, 3:21 to 7:25. Under those circumstances, this Court would be justified in finding that affording Porcelli an additional opportunity to cure would be futile or, at the very least, unjustified, given his history of persistent discovery abuses. *See generally Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1097 (9th Cir. 2007) (“The most critical factor to be considered in case-dispositive sanctions is whether a party’s discovery violations make it impossible for a court to be confident that the parties will ever have access to the true facts.” (internal quotation marks omitted)); *Toth v. Trans World Airlines, Inc.*, 862 F.2d 1381, 1385 (9th Cir. 1988) (affirming Fed. R. Civ. P. 37 dismissal sanctions after determining that less-drastic sanctions were unavailable given the plaintiff’s “continued refusal to respond to requests to produce . . . even after the court had ordered their responses,” her “noncompliance with judicial orders,” and the district court’s consideration and attempts at “less drastic sanctions”); *United States v. \$40,200.00 in U.S. Currency*, No. 3:14-cv-00229-LRH-(VPC), 2015 WL 4276205, at *9 (D. Nev. July 14, 2015) (“[The claimant’s] pattern of failing to respond to basic discovery . . . make it impossible for the government to proceed or for the court to consider a dispositive motion or preside over a trial.”); *Townsend v. Ihde*, No. CV 13-147-BLG-CSO, 2015 WL 93768, at *3-4 (D. Mont. Jan. 7, 2015) (granting Fed. R. Civ. P. 37 dismissal sanctions, in part after finding that “another attempt at a deposition [of the plaintiff would be] futile” when the plaintiff had “represented that his only answer will be ‘privileged information’”).

III. Conclusion

Claimants’ arguments opposing Plaintiff’s Supp. R. G(8)(c)(i)(A) Motion to Strike are without merit. This Court should grant Plaintiff’s Motion.

Dated this 19th day of February 2021.

Respectfully submitted,

NICHOLAS A. TRUTANICH
United States Attorney

/s/ James A. Blum
JAMES A. BLUM
Assistant United States Attorney